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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IMRAN CHAUDHRI, DEIDRA ROSS,
RICHARD SMITH, LARRY BYRD, DAVID
CHRISTOPHER, DEREK HAHN and LEE S.
KELLY, individually, and on behalf of
themselves and all others
similarly situated,

Plaintiffs,

v.

OSRAM SYLVANIA, INC., and OSRAM
SYLVANIA PRODUCTS, INC.,

Defendants.

Case No. 2:11-CV-05504 (SDW)(MCA)

**CERTIFICATION OF
JOHN E. KEEFE, JR.**

I, JOHN E. KEEFE, JR., of full age, hereby certifies as follows:

1. I am an attorney-at-law of the State of New Jersey and am a Co-Managing Member of Keefe Bartels, LLC ("KB"), Court-appointed Co-Class Counsel to the Class Representatives and the Class.

2. Exhibit "A" is a true and accurate copy of the Fairness Hearing Transcript, dated March 20, 2015.

3. Exhibit "B" is a true and accurate copy of the Class Action Settlement Agreement.
4. Exhibit "C" is a true and accurate copy of the Certification of Norman Swett.
5. Exhibit "D" is a true and accurate copy of the Certification of Christopher G. Linscott.

I certify that the statements made by me are true and accurate to the best of my knowledge and belief. I understand that, if any of these statements are willfully false, I am subject to punishment.

Dated: April 24, 2015

/s/ John E. Keefe, Jr.
JOHN E. KEEFE, JR.

Exhibit “A”

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IMRAN CHAUDHRI individually,	:	Civil No.
and on behalf of all others	:	11-cv-5504-MCA
similarly situated,	:	
	:	TRANSCRIPT OF
Plaintiff,	:	FAIRNESS HEARING
	:	
v.	:	
	:	
OSRAM SYLVANIA, INC. and	:	
OSRAM SYLVANIA PRODUCTS, INC.,	:	
	:	
Defendants.	:	

-----x

Newark, New Jersey
March 20, 2015

BEFORE:

THE HON. MADELINE COX ARLEO, U.S.D.J.

Reported by:
CHARLES P. McGUIRE, C.C.R.
Official Court Reporter

Pursuant to Section 753, Title 28, United States
Code, the following transcript is certified to be
an accurate record as taken stenographically in
the above entitled proceedings.

s/CHARLES P. McGUIRE, C.C.R.

CHARLES P. McGUIRE, C.C.R.

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1 THE COURT CLERK: All rise.

2 THE COURT: Good morning.

3 Okay. We're here in Chaudhri vs. Sylvania.

4 Could I have appearances, please?

5 MR. KEEFE: Good morning, Your Honor.

6 John E. Keefe, Jr. of the law firm of
7 Keefe Bartels, with my colleagues, Paul DiGiorgio and
8 Steven Sullivan, on behalf of Chaudhri and the class.

9 THE COURT: Okay.

10 MR. EICHEN: Barry Eichen, Eichen Crutchlow Zaslow
11 McElroy & Rosenberg, on behalf of Chaudhri and the class.

12 THE COURT: Okay.

13 MR. KISTLER: Good morning, Your Honor.

14 David Kistler from Blank Rome on behalf of the
15 Defendant Osram Sylvania.

16 THE COURT: Okay.

17 MS. EUN: And Eunnice Eun of Kirkland & Ellis,
18 here on behalf of Osram Sylvania.

19 THE COURT: Okay. Anyone else in the back of the
20 courtroom, any other folks that need to be identified?

21 MR. EICHEN: Tom Paciorkowski was with my firm at
22 the beginning of this, and he is a very good CFA lawyer, and
23 he is in the back right here.

24 THE COURT: Okay.

25 MR. EICHEN: And? Anybody else?

1 All right.

2 THE COURT: Okay. Have a seat, everyone.

3 All right. So we're here for a fairness hearing
4 and a final approval of a settlement that had been
5 preliminarily approved -- what was the date? It was
6 December of two thousand and -- what's the date of the
7 preliminary approval?

8 MR. KEEFE: December 20 --

9 THE COURT: '14.

10 MR. KEEFE: -- '14, yes.

11 THE COURT: Okay. So what I'd like to address
12 first is the one and only objector that was received after
13 the close of business last night, a notice of claim.

14 And let me just put a little bit of factual
15 history on the record in terms of dates.

16 A notice went out in the winter and fall, and
17 we'll talk about those specific dates in a minute, but in
18 January, I received a brief in support of approval and
19 attorneys' fees, and I received an objection from one person
20 filed by a lawyer in Pennsylvania by the name of
21 Brent Vullings, and he had a client by the name of Morrison,
22 and Mr. Morrison filed an objection, but, most importantly,
23 filed at the close of business yesterday a notice of motion
24 for leave to file proof of claim.

25 I checked with my clerk, and it appears that it

1 was filed between 4:30 and five o'clock yesterday, and
2 Plaintiff's counsel responded by a letter very late last
3 night, around midnight, to the belated notice of the proof
4 of claim filed by Mr. Vullings on behalf of his client.

5 And he raises some pretty substantial issues that
6 I thought -- he raised issues in his notice of claim. Those
7 issues were strongly rebutted by Plaintiff's counsel, and
8 I'm going to let them explain in detail in a minute what was
9 in their March 19th letter that was filed late last night.

10 And they conclude with this: "Mr. Morrison's
11 'Motion' is a highly suspect filing that contains
12 unsubstantiated and baseless claims. There is no legal
13 support for the motion or the relief that Mr. Morrison
14 seeks. The utter lack of disregard for the District's Local
15 Rules and long-standing precedent for standing and
16 settlement of class actions establishes that Mr. Morrison
17 and Mr. Vullings do not seek to improve the Settlement or
18 provide added value to the Class. Instead, it appears that
19 they seek some yet-to-be-disclosed benefit for themselves
20 that prior courts have severely criticized and sanctioned."

21 And it appears that they have appeared, both of
22 them, Mr. Morrison in particular, as objectors in other
23 class settlements. And I should also note that, as I was
24 advised, Mr. -- and I'll let Plaintiff talk about his
25 background in a moment.

1 In any event, because I got the letter and because
2 I got such a strong opposition by Plaintiff's counsel that I
3 just read into the record, I had my law clerk reach out to
4 Mr. Vullings to see if he wanted to participate in today's
5 hearings, since he's not here. We moved the hearing up a
6 couple of hours because of inclement weather, and I wanted
7 to give him an opportunity to respond to Plaintiff's letter
8 by phone today, and we contacted him, and his answer to my
9 law clerk was that he would rest on his papers.

10 So I take that as a significant waiver of any
11 rights he has or any rebuttal to the claims that Plaintiff's
12 counsel raises, the significant claims, and that's not lost
13 on me that he didn't want to respond, particularly when I
14 gave him an opportunity to respond by phone and he was in
15 his office this morning and declined to do so.

16 So I just wanted to put that on the record, and
17 I'd like to begin with his claim, because I'm inclined to
18 find that he doesn't have standing, that his claim is late,
19 that it is gamesmanship, that he was aware of this case for
20 a very long time, he had a full and fair opportunity to
21 respond and file a claim, represented by counsel at many,
22 many steps in this proceeding, and to wait until last night
23 to file this application and then refuse to even participate
24 today when he was invited to do so by me speaks volumes.
25 And I'm prepared to find that he doesn't have standing, and

1 I'm also prepared, having reviewed the submissions
2 of counsel very carefully, as well as the certification of
3 Mr. Keefe and others, to approve the settlement and to
4 approve the attorneys' fees.

5 But before I do that, I'd like to address
6 Mr. Morrison's objections.

7 Mr. Keefe?

8 MR. KEEFE: Thank you, Your Honor.

9 So one of the starting points, I believe, for
10 viewing this objector and the objection really starts with
11 Your Honor's approval of our class notice, which is the
12 fundamental concepts of due process.

13 And in this case, Your Honor, the Defendant was a
14 producer of a product but was not the seller of that
15 product, and we, in an attempt to address the notion of
16 ascertainability, which is now a hot-button topic in
17 consumer class cases, we were able to identify the largest
18 retailers of the subject covered products, and we were able
19 to identify the largest retailers that comprised
20 approximately 97 percent of the sales of the covered
21 products.

22 In so doing that, we were able to identify with
23 the cooperation of these third parties and protective orders
24 approximately 1.6 million consumers that bought covered
25 products. That allowed us as we went through this case to

1 develop a settlement paradigm that allowed for direct
2 payment of claims. We knew who bought the covered products
3 in large measure. We also, in the event the documents
4 weren't entirely accurate, we went through a very detailed
5 notice publication process, all of which were to benefit not
6 only Mr. Morrison, the objector here, but all of the class
7 members.

8 That notice plan was really worked very carefully
9 based upon the discovery that we took of the Defendant. We
10 understood how they penetrated the market, we understood how
11 they sold the product, and we modeled the class notice plan
12 to reach anybody that we couldn't give direct notice to.

13 So Mr. Morrison and all of the class members --

14 THE COURT: Let me stop you for a minute.

15 Remind me how many folks were identified
16 directly and how many --

17 MR. KEEFE: Sure.

18 THE COURT: -- opted in in terms of number.

19 MR. KEEFE: Sure. All right.

20 So the direct notice plan initially went out to
21 1.6 million consumers who we know bought the covered
22 products. The notice administrator then received returns of
23 undeliverables due to the time period of the class. They
24 were able to cure some of those undeliverables, and right
25 about approximately 1.4 million people will receive a check

1 in this case. Then through our notice publication process,
2 we were able to have those folks file claims, and we have
3 about 80,000 or so in that regard.

4 THE COURT: Okay.

5 MR. KEEFE: So Mr. Morrison -- that's the
6 framework through which we put Mr. Morrison's notice.

7 So he files his objection, and in his objection --

8 THE COURT: The date of that?

9 MR. KEEFE: February 9th.

10 THE COURT: Okay.

11 MR. KEEFE: February 9th, which, by the way, was
12 the last date possible for any objector to file their
13 objection with the Court.

14 It is significant to note that there were only
15 28 opt-outs in this case. There was only one objection.
16 That is Mr. Morrison, whom I'm going to speak more precisely
17 about.

18 Mr. Morrison filed that application --

19 THE COURT: Twenty-eight opt-outs out of about
20 roughly 1.5 million when you count in the other 80.

21 MR. KEEFE: Right, and don't forget that's only as
22 to the people that we're going to send checks to. The
23 population who received notice, according to our notice
24 provider, they reached 80 percent of the total population.

25 THE COURT: Okay.

1 MR. KEEFE: So it's a less than .003 percentage of
2 opt-outs.

3 THE COURT: Got it.

4 MR. KEEFE: So with respect to this one objection,
5 at the time he filed it, we noted particular deficiencies in
6 the notice, and that also, too, was on the eve of -- I
7 believe we received it at about 9:30 p.m. on the last -- on
8 the last evening.

9 But that objection did not set forth any standing,
10 and in our opposition to that, we demonstrated to the Court
11 that there was no standing because he doesn't state that it
12 was -- he bought a covered product. There was two ways to
13 do that under the notice. If you're going to object, you
14 can, one, submit proof of claim; two, that you can certify
15 that you bought a covered product. He did neither in the
16 initial application.

17 There were many other deficiencies that we point
18 out to Your Honor in our brief.

19 I took the opportunity to make personal phone
20 calls to Mr. Vullings because we truly didn't understand the
21 objection. We asked Mr. Vullings if he could tell us
22 whether his client purchased any of the covered products.
23 He complained about certain remedies but did not tell us nor
24 has he as of today told us that he has made multiple
25 purchases of the product.

1 Furthermore, he states -- he does not state in any
2 way, shape or form that he's a class member.

3 So that brings us through our opposition and just
4 the highlights of that to last evening.

5 On the eve of the final approval, which I'll note
6 has been set for months by Your Honor's preliminary approval
7 order, by a very lengthy notice process, we were
8 exceptionally careful to start the notice publication
9 process, which went on for several months.

10 So last night, in preparation for today, my group
11 was together, and we received at approximately, at least my
12 fax when my crew sent it to me was 5:36, so sometime around
13 4 to 5 p.m., we get Mr. Vullings's motion for leave to file
14 proof of claim.

15 I'll note that Mr. Vullings had every opportunity
16 since the filing of our opposition to his objection to
17 attempt to cure --

18 THE COURT: Just so the record is clear, when he
19 filed his papers in February in response to your motion to
20 approve the settlement and for fees, he never filed the
21 proof of claim.

22 MR. KEEFE: He never filed the proof of claim.

23 THE COURT: He just said, I object to the
24 settlement; right? It was brief.

25 MR. KEEFE: I object to the settlement, that's

1 correct.

2 THE COURT: Okay.

3 MR. KEEFE: And what he continues to do is, he
4 files --

5 THE COURT: I'm sorry.

6 Is there something you want to add?

7 MR. EICHEN: You know, I just wanted to say a few
8 things that -- that were -- and Mr. Keefe did a great job in
9 terms of the history. But he's not a direct-mail recipient,
10 so there's no proof he even ever purchased a product. He
11 never provided an affidavit --

12 THE COURT: Saying that I swear under oath that I
13 bought the product.

14 MR. EICHEN: Right. Exactly right. He was in
15 jail for 60 percent of the class period, the opt-out period.
16 So 60 percent of the time.

17 He also sent us a picture of a car he allegedly --

18 THE COURT: We'll get to that. That's in the
19 papers that were filed late yesterday evening.

20 MR. EICHEN: Okay. And one thing also I just
21 wanted --

22 THE COURT: So let's just make the record clear.
23 So he files a brief back in February --

24 MR. EICHEN: Right.

25 THE COURT: -- through a lawyer --

1 MR. EICHEN: Correct.

2 THE COURT: -- saying, I object to the settlement,
3 a pretty standard objection --

4 MR. EICHEN: Correct.

5 THE COURT: -- to everything, never having filed a
6 proof of claim.

7 MR. EICHEN: Correct.

8 THE COURT: You reply to that. Everything's been
9 filed electronically. You file your reply brief on March
10 13th, and you go through and you explain why he doesn't have
11 standing in particular, that he's never filed a notice of
12 claim demonstrating that he is a class member, either --
13 giving documents establishing that he has standing, proof of
14 purchase, or a sworn statement under oath.

15 Instead, on the 19th, he files for the first time
16 a belated notice of claim, and in that notice of claim, he
17 has an affidavit, and let's talk about the affidavit.

18 The affidavit says this in paragraph two. This is
19 filed electronically, 96-1, yesterday evening: "I have been
20 in the automotive business repairing automobiles since 1956
21 so going on 59 years. Chevrolet certified me in 1962 as a
22 mechanic.

23 "I live in Olney, Texas and buy salvaged vehicles
24 and repair them for sale.

25 "In my business I buy hundreds of automobile parts

1 each year for the purpose of repairing salvaged vehicles.

2 "The last time I specifically remember purchasing
3 a Sylvania automotive replacement bulb was around 2011 in
4 the Summer because I remember it was very hot. I purchased
5 a Sylvania automotive bulb at O'Riley's in Graham, Texas for
6 a 2001 or 2002 Chevrolet Cavalier. However, I did not
7 receive a post card notice."

8 And then he goes on.

9 Actually, I'm going to read the whole declaration
10 for the record.

11 Finally, he says: "With respect to the objection
12 requirements the Notice states, 'Documentation such as Proof
13 of Purchase or verification under oath that you are a Class
14 Member (see Question 11).' I then read Question 11 'How can
15 I receive payment?' Question 11 says, in part, 'You either
16 need to provide proof of purchase (such as a receipt, credit
17 card record, document, or product packaging) or swear under
18 oath that you purchased one of the included Covered
19 Products, for other than resale or distribution to others.'
20 However, Question 11 then states all claims must be
21 submitted, 'online or mail it postmarked no later than
22 November 14th, 2014.'" Once I realized I had missed the
23 claims date I did not think there was a point in making the
24 declaration because the claims period had passed."

25 And he attaches a picture of a car with the

1 headlights.

2 And just so the record is clear, Sylvania makes
3 many different kinds of lightbulbs that are not part of this
4 lawsuit; correct?

5 MR. KEEFE: That's correct. Our complaint covered
6 what we're calling covered bulbs. There's many of them.

7 THE COURT: And other particular kinds of bulbs.

8 MR. KEEFE: That's correct.

9 THE COURT: And all he says here is I remember
10 four years ago I purchased a bulb, a Sylvania bulb, and it
11 was hot, so it was in the summer, and he said he bought it
12 at O'Riley's in Graham, Texas.

13 Did you get a list of purchasers of the covered
14 bulb from O'Riley's?

15 MR. KEEFE: Yes, Your Honor. What we did was,
16 again, in an attempt to ascertain our class, we took
17 discovery of the Defendant. The Defendant provided us with
18 -- they are not direct sellers of the product. We learned
19 who their major retailers were. We identified those
20 retailers. We issued subpoenas to those retailers for their
21 data related to purchases of the covered products during the
22 class period. We were able to negotiate protective orders,
23 and we reviewed literally millions of lines of data.

24 In so doing, we would have, I believe, identified
25 during this purported purchase period from O'Riley's whether

1 Mr. Morrison was the purchaser of a covered product.

2 THE COURT: And he was not.

3 MR. KEEFE: His name did not come up on any of our
4 data searches.

5 THE COURT: Okay. And even in his very late
6 notice of claim, he still hasn't given any proof, other than
7 the picture of a car with lightbulbs in it.

8 MR. KEEFE: That's right.

9 THE COURT: And he hasn't sworn under oath that he
10 was a purchaser of this particular covered product.

11 MR. KEEFE: So he's produced no proof of purchase,
12 and he has not sworn under oath that he purchased a covered
13 product.

14 THE COURT: And I know there was a point earlier,
15 some period of disability where he was incarcerated during
16 this time?

17 MR. EICHEN: Yes, 60 percent, quite frankly.

18 THE COURT: Tell me a little bit more detail about
19 that.

20 MR. EICHEN: Well, through an investigator, we
21 were able to find that this person has, in fact, objected --
22 he's a serial objector, and in fact, he was in jail for a
23 good period of time during the class notice, 60 percent of
24 the time.

25 THE COURT: During the class notice, or during the

1 time when the bulbs were being sold?

2 MR. EICHEN: The class period.

3 THE COURT: Okay. Okay.

4 MR. EICHEN: Okay. And also, he sent a picture of
5 the car, and as Your Honor is well aware, we have the
6 picture in our submission, which shows the plate. Through
7 the plate, we were able to make a determination that, in
8 fact, he does not own that vehicle.

9 THE COURT: Right, and that's Exhibit 1 to
10 document number 96-1, which is this late-filed document from
11 last night.

12 And I assume that your argument then is, he was
13 not a consumer, so even if he did purchase it, he wasn't a
14 consumer, he wouldn't be part of the class because he was
15 doing this as part of his commercial industry that he
16 explained as a certified mechanic and he repairs hundreds of
17 cars.

18 MR. EICHEN: Yes, he does absolutely not fit
19 within the class definition. He is, in fact, a reseller,
20 based on his certification.

21 THE COURT: And what does the notice require; that
22 it is for your own use, the covered product?

23 MR. KEEFE: All persons or entities in the
24 United States who purchased one or more of the covered
25 products at any time during the class period, other than,

1 quote, for resale or distribution to another person or an
2 entity, your preliminary approval order at paragraph three.

3 THE COURT: Right, and that was to prevent double
4 recovery; right?

5 MR. EICHEN: That is correct.

6 THE COURT: Okay.

7 MR. KEEFE: And to make sure that the truly
8 injured person -- a reseller is not the injured party.

9 THE COURT: Right, and you wouldn't want him
10 recovering and the person who bought the bulbs recovering as
11 well.

12 MR. KEEFE: That's right. That's right.

13 So to highlight what really is -- you know, the
14 lawyers here on the Plaintiff's team worked late into the
15 night to respond to Mr. Vullings, and I'm referring to the
16 letter that we submitted, albeit late last night, but just
17 to highlight for the Court.

18 So on the eve of this fairness hearing, we
19 received the untimely and procedurally substantively
20 deficient motion for leave to file the proof of claim. We
21 ask that the Court strike it for the following reasons.

22 Really, what this motion starts off by is a
23 surreply without leave of court. He takes offense to the
24 notion of being called a repeat objector. The fact of the
25 matter is, in our brief, we call him a repeat objector

1 because he's done it more than once. He attempts to
2 manufacture membership in the class that simply doesn't
3 exist. In fact, he clarifies for Your Honor and for us that
4 he, in fact, is not a class member.

5 Also, you know, one of the things when we read --
6 and I've been in the class action bar for a while, and there
7 are sometimes meaningful objections, and you get to
8 understand what the legal bases are. The original objection
9 stated no rule, nothing under Rule 23, and no case law to
10 support their objection. So perhaps even at this late hour,
11 we would find some legal arguments about what is purportedly
12 wrong with our settlement. Yet there is still no case law
13 or authority for this inexcusable and impermissible
14 surreply.

15 Notwithstanding the fact that there is no notice
16 of motion, there's no form of order, and he doesn't comply
17 with the local rules of this Court, we go to the declaration
18 itself, and we note that buying, quote, a bulb does not give
19 one standing. In the Hydroxy Cut litigation, an objector
20 there had said, I remember buying a diet product, and the
21 Court says, If you didn't buy Hydroxy Cut, then you have no
22 standing.

23 And that's really what Morrison has done here. He
24 can't give us a proof, he can't give us an actual proof of
25 purchase, and he doesn't swear under oath that he purchased

1 a covered bulb.

2 He also says, you know, I didn't get notice; I
3 didn't get a postcard.

4 Well, there really now seems to be a very good
5 explanation for that: If you didn't buy a covered bulb, you
6 would not have come up on our data searches and you would
7 not have gotten direct notice.

8 But he did see notice publication, which means
9 that our notice publication was very effective. He states
10 that, In my business, I buy hundreds of automotive parts
11 repairing salvaged vehicles. He specifically takes himself
12 out of the class by not defining the covered bulb and
13 suggests strongly that he's in the business of resale and
14 distribution to another entity.

15 The picture shows nothing. It shows a vehicle
16 that has a headlight in it. It doesn't show -- it could
17 have been any one of Sylvania's competitors. It could have
18 been a standard bulb. We really have no idea.

19 Fourth, he boldly states that he still -- he still
20 states the same thing as he did in his objection, that he
21 doesn't need to file a claim to be an objector.

22 Well, in our opposition to his objection, we cited
23 case law. I like to think that he would have read that
24 case, and if he wanted to distinguish it, say it's a
25 minority view, done something, but he doesn't; he simply

1 says, That's not so, this is my argument, that a class
2 member does not have to make a claim to have standing.

3 That's just patently false.

4 Specifically, as recently as January of this year,
5 the Toys "R" Us re-opinion on class certification, which
6 Mr. Vullings represents Mr. Morrison's daughter-in-law,
7 Kim Morrison, as an objector in that case -- you'd think he
8 would have read the cases he was involved with -- said that
9 you have to file a claim to have standing. And, in fact,
10 the Circuit dismissed the objection because of the very flaw
11 that Mr. Vullings again makes on behalf of Mr. Morrison in
12 this case.

13 So what are they doing? Not really sure,
14 Your Honor, but I will say this: They still don't get it
15 right. They still don't establish standing, and they don't
16 establish any meritorious objection should this Court find
17 that there is standing.

18 Specifically, I'll just note for the record that
19 he attacked the notion that expenses should not be
20 reimbursed with fees, he attacked the notion that there
21 should be -- if you're a multiple purchaser, you should get
22 more than one remedy. Even under his argument -- and no one
23 else objected, even multiple purchasers; they have the right
24 to opt out or object -- no multiple purchaser objected.

25 So he fails to meet any resemblance of any

1 criteria that this Court should consider standing or the
2 merits of his argument.

3 I don't know if I have any other comments to the
4 objector. Do you?

5 MR. EICHEN: I think, John, you covered all of it.

6 THE COURT: Okay. Well, I think I can dispose of
7 Mr. Morrison quite quickly.

8 I begin by noting he's not a pro se, he's
9 represented by counsel, and counsel should know better than
10 to wait until literally after close of business the day
11 before a fairness hearing to file a brief and a notice of
12 claim.

13 But even if I was to consider that, which I will,
14 in the interests of justice, there's an opposition filed
15 literally at midnight last night. At 11 o'clock this
16 morning, a call is made to the lawyer, giving him, despite
17 all of these procedural irregularities and complete
18 disregard for our local rules and our rules of procedure, I
19 offered him an opportunity to be heard in the interests of
20 justice, and he declined. He said he'd rest on the papers.
21 And the papers were strongly, strongly challenged.

22 I looked carefully at the notice of claim, and
23 Mr. Morrison's notice of claim is more relevant for what it
24 doesn't say than for what it says. What it doesn't say is
25 that he bought the bulb. He doesn't swear that under oath.

1 What he doesn't say is, Here's my proof of purchase.

2 And the only plausible conclusion from this
3 affidavit is that he does not fit within the class
4 definition. He makes clear that he is a professional
5 mechanic, he repairs salvaged vehicles as part of a
6 business, and he bought a Sylvania bulb. That's all he
7 knows, that's all he's sworn to under oath: I bought a
8 bulb, I'm in the business, I resell cars, and the car I'm
9 attaching it to is a car that is not mine, that is owned by
10 somebody else.

11 The only plausible conclusion I can draw from that
12 is, he is not a consumer. If I give him every benefit of
13 the doubt under the sun, I can only conclude two things:
14 He's not a consumer, and I don't even think he bought the
15 bulb in question. If he is in the business, he knows the
16 difference between the covered product and the not-covered
17 product, and he made a choice to put under oath that he
18 bought a Sylvania bulb and made the choice not to swear that
19 he bought a covered bulb.

20 So it's not even a close call on standing here.
21 Putting aside all the procedural irregularities in the
22 interests of justice, he has no standing. It's not even
23 close.

24 Even if I were to consider him a person with
25 standing and allow him to file a notice of claim, I can't

1 allow him to file the claim out of time because he has not
2 complied with the notice. And he had a lawyer to help him,
3 and frankly, the notice is pretty basic, and he has chosen
4 carefully to carve himself out of the class of folks by not
5 mentioning the right bulb and by making clear that he's a
6 commercial purchaser.

7 His objections are without merit, the substantive
8 objections that were filed back in February. He doesn't
9 cite anything other than generic protests about the amount
10 of fees and the class in general.

11 And, most relevant, literally millions of people
12 received notice of this claim, and out of those millions, at
13 least 1.5, no one has objected. He is the only one.

14 So, given the circumstances, given the situation
15 upon which this objection arises, given that I'm satisfied
16 beyond question that he doesn't have standing here, and even
17 if he did have standing that his substantive objections have
18 no merit, I am going to strike -- I am denying his notice
19 for leave to file a proof of claim, and I am satisfied that
20 the objections that are filed by him are not meritorious.

21 So that takes care of that. And I wanted to take
22 care of that up front, because I thought it was important to
23 place on the record the history here, a history that's
24 unchallenged because counsel chose not to appear today, even
25 by phone and at my invitation.

1 And given the breadth of the settlement, given the
2 breadth of the notice, I am satisfied that fair notice was
3 given. Counsel have gone above and beyond to respond to his
4 objection and to really notify as many potential consumers
5 as were possible, beyond what I probably would have required
6 them to do, and that's not lost on me.

7 I reviewed the papers. Other than Mr. Morrison's
8 objection, I note there are 20 opt-outs, but there are no
9 other objections.

10 And I'm going to go through the Girsh factors and
11 I'm going to go through the fee petition, but I can say that
12 I am satisfied that the settlement here and the request for
13 fees complies with Federal Rules of Civil Procedure, and
14 also, I have no doubt that it's fair and reasonable under
15 the circumstances.

16 And I'd just like to go through everything for the
17 record.

18 Let's start with the final approval of the class
19 settlement. Mr. Keefe talked about it a little bit earlier.
20 And before I go into the factors, just for the record, I
21 would like him to just set forth in detail -- and I think he
22 touched upon it when we talked about Mr. Morrison, but what
23 it provides, how much money we're talking about, the
24 \$30 million, how that breaks down to the claimants, and
25 also, which I think is not insignificant, the change in

1 packaging going forward.

2 So why don't we put that on the record briefly,
3 and then I'll go through the Girsh factors.

4 MR. KEEFE: Very good. Thank you, Your Honor.

5 So after extensive discovery, motions to dismiss
6 with Your Honor's case management order where class
7 certification and, in fact, summary judgment was teed up,
8 and without a stay, the parties worked on a dual track to
9 mediate over a several-month period, and ultimately, we were
10 able to settle this case with Mr. Lerner and Greenberg, who
11 I can just say for the record were incredibly well prepared
12 and a pleasure to work with, and they tested, I believe I
13 can say, both sides vigorously in the process. We were able
14 to settle with a common settlement fund of \$30 million, with
15 an agreement that the Defendant would make packaging and
16 warranty changes, and this we're calling nonmonetary relief,
17 as a considerable component of the settlement.

18 The settlement is designed and meets the gravamen
19 of Plaintiff's complaint with respect to Plaintiff's claim
20 of upselling certain products and those performance
21 characteristics both in misrepresentation and in certain
22 omissions. It was a very hotly contested litigation, as you
23 would expect, given, number one, the stakes, and certainly
24 given the competency of our adversaries.

25 I think the beauty of this deal is that we took

1 very, very seriously what we could best do for consumers.
2 In creating this \$30 million settlement fund with these
3 packaging changes, we didn't create an onerous claims
4 process. We were able to identify consumers through the
5 third-party discovery, through negotiation, we were able to
6 get a direct pay claims process for those people that we
7 identified, and they will take a pro rata share of the
8 settlement fund after Your Honor makes an award of costs and
9 fees.

10 THE COURT: And that will be approximately how
11 much per consumer?

12 MR. KEEFE: Approximately \$12 per consumer. And
13 what I'd like to note is that --

14 THE COURT: Those consumers who either opted in or
15 you just notified will get a check in the mail for \$12.
16 It's automatic; right?

17 MR. KEEFE: It's going to be automatic.

18 THE COURT: And how much was the retail price of
19 the bulb?

20 MR. KEEFE: Well, the retail prices varied, but
21 what we did in class certification preparation was, we
22 developed a damage methodology, a methodology that our
23 expert economists had used in other consumer cases approved
24 here in the Circuit that's called a spread damage model. So
25 we take the price of a standard bulb because there was

1 functionality to that and took a spread between the sale of
2 the covered products and did a cost-averaging methodology.
3 So based upon that, the \$12 represents about 70-percent
4 recovery of that spread damage model.

5 THE COURT: Okay.

6 MR. KEEFE: Okay?

7 So the \$12, it is important, Your Honor, to note,
8 there is no reverter in this case, there is none of those
9 fictitious cy-pres. If, for example, there is money left
10 over and it's economically feasible to do so, we anticipate
11 there could be a second round to these consumers. So we
12 understand over the class period people pass away, people
13 move, despite best searches, which our notice administrator
14 has done to identify consumers, there may very well be a
15 second round. Money that's left over will not be going to
16 Plaintiff's counsel, will not be going to some charity or --
17 that's not the plan, and it's certainly not going to revert
18 to the Defendants. We're using 12 as a very conservative,
19 so when we look at 70 percent of the spread model, that's a
20 very healthy remedy by way of settlement, and it could go
21 higher.

22 So that is the remedy. In addition, as Your Honor
23 pointed out, we're very, very proud of the nonmonetary
24 relief that we were able to obtain. It really goes to the
25 gravamen of our case. I'm extremely proud, as Plaintiff's

1 counsel, and I'm very grateful to the defense attorneys,
2 that what we talk about in a consumer fraud case is
3 compensation and deterrence: How do we cure the problem?
4 And, you know, very often, it's only a deterrence and not
5 cash. Here, we have \$30 million of cash and we have
6 deterrence. And so we're changing the packaging, the
7 Defendant has agreed voluntarily to change the packaging, to
8 remove the icons for improved road distance, improved side
9 road distance, remove or clarify disclaimer language on the
10 front and back of the packaging, increase the font and color
11 size, include a precise number of hours to product, because
12 performance and durability was an issue.

13 And so this nonmonetary relief really was a
14 collaborative effort with, first, we hired experts. We
15 hired packaging experts, we hired warranty experts, and they
16 were able to negotiate that with the Defendant.

17 And we're not seeking to put any monetary value to
18 that. We're not trying to figure out what that may mean.
19 But here's what we do know in a nonmonetary way. We know
20 that it means many of these folks are repeat purchasers.
21 They will be very well informed about what they're getting
22 with these products moving forward. So that nonmonetary
23 relief in addition to the warranty changes where we move --
24 we asked the Defendant to consider, and they did so,
25 voluntarily, and through the settlement, to enhance their

1 warranty. In some cases, it expands the warranty provision
2 from 12 to 24 months, and it truly makes it easier for the
3 consumer to navigate through the warranty process with
4 Sylvania.

5 So that, Your Honor, is really the nuts and bolts
6 of the settlement.

7 Your Honor is aware of our notice plan, which I
8 think was terrifically focused but I think appropriately
9 focused. I mean, I think some of those plans just spend a
10 ton of money on the back page of "Parade" or "USA Today" and
11 don't really focus it to who the consumers are in this case,
12 and through Kinsella Media and Rust, as a result of our
13 discovery and discussions with the Defendant, we got to
14 understand who their target audience was, and you'll see
15 what we put in our papers, that we did, in fact, hit the
16 target audience.

17 So that's the highlights of the case.

18 If you'd like, Mr. Eichen can go through Girsh
19 and --

20 THE COURT: I'm happy with the Girsh.

21 Anyone else have anything to add?

22 MR. EICHEN: No, Your Honor.

23 THE COURT: Okay. So, thank you, Mr. Keefe, for
24 that background explanation. I think it was very helpful.

25 And I should note that what you just discussed was

1 certainly very cogently prepared in the brief and the
2 affidavits that were submitted to this Court and filed
3 electronically prior to today's hearing.

4 And as I began today's hearing, I said I was
5 satisfied that final approval should be granted here of the
6 class settlement, and in doing so, I'd like to follow the
7 precedent in the 3rd Circuit and talk a little bit about the
8 Girsh factors and Rule 23.

9 And the 3rd Circuit requires me to consider the
10 requirements of 23(a), numerosity, commonality, adequate
11 representation, and typicality. I want to go through that
12 briefly because I think it's pretty obvious just from what's
13 been discussed so far.

14 There's no question that this case satisfies these
15 factors. The proposed class is too numerous for joinder.
16 We're talking about millions of consumers of lightbulbs --
17 headlights, I should say - over 1.6 million. That factor is
18 easily satisfied.

19 Similarly, there are, if not common, almost
20 identical questions of law and fact common to the class,
21 whether Sylvania misrepresented or omitted material facts
22 with respect to the covered products to assure all consumers
23 got the same covered products, and the gravamen of the case
24 is really the alleged misrepresentations of the marketing
25 and materials. And that's the same and that's common to

1 everyone in the case, so that commonality is easily
2 satisfied, and for the same reasons, so is typicality. The
3 class representatives' claims arise out of the same alleged
4 misrepresentations and alleged omissions. So that's easy.

5 And I'm also satisfied that there's no conflict
6 between the class representatives and the class. Each of
7 the class representatives purchased one or more of the
8 covered products based on the allegedly deceptive marketing
9 materials.

10 And I think it's clear from Mr. Keefe's
11 presentation this morning that class counsel have invested
12 considerable time and resources in this matter, not just in
13 pursuing this case vigorously from the start, but in
14 retaining the proper experts and consultants to make sure
15 notice was appropriately served to the right group and the
16 right audience, and that careful consideration was given to
17 damage ranges based on the product. It demonstrates that
18 they have considerable experience in litigating these type
19 of complex class actions, and, on top of all their
20 experience, it is also clear to me that it was really
21 meaningful, and meaningful to the consumers.

22 And so I'm satisfied that the adequacy requirement
23 is satisfied.

24 I'm going to go through the Girsh factors.

25 I'm going to talk about one more: That 23(b) (3)

1 requires a finding that the class action be superior to
2 other methods available to the fair and efficient
3 adjudication of the controversy.

4 This is not even a close call. I can't imagine
5 anything other than a class action as the appropriate
6 vehicle to resolve the claims here.

7 23(e) requires a determination that the proposed
8 settlement is fair, reasonable, and adequate.

9 The 3rd Circuit talks about the Girsh factors, and
10 I'll go through them briefly.

11 The first factor is the complexity, expense, and
12 likely duration of the litigation.

13 And class actions without question raise a large
14 number of complex legal issues, and here, a fair amount of
15 discovery had gone forward, some preliminary motions had
16 been filed, and I have no doubt that Plaintiff's counsel
17 would have vigorously litigated this case to conclusion if
18 required to do so.

19 However, given that complexity and expense and
20 likely duration and the risk of every case that goes forward
21 to trial, a settlement guarantees immediate relief for the
22 class and a substantial immediate relief that really causes
23 them to do nothing but open the mail and cash a check, and
24 that factor weighs heavily in favor of final approval.

25 The second factor, reaction to the class

1 settlement, we talked about that at length. We're talking
2 about a million and a half class members, only 28
3 exclusions, and one untimely class member that we talked
4 about earlier who has not even filed the proper notice of
5 claim. That, the small number of exclusions and no
6 objections, no meaningful objection, demonstrates to me that
7 this factor militates in favor of approval of the
8 settlement.

9 The third Girsh factor talks about the degree of
10 case development prior to settlement. And it's not lost on
11 me that the parties did engage in more than a year and a
12 half of discovery related to class certification on
13 Plaintiff's claims. I know that because I was the
14 Magistrate Judge involved in the case. There were discovery
15 requests, third-party subpoenas, depositions, and it was at
16 a point with my recommendation that the parties engaged in
17 substantial arm's-length negotiations, and they used
18 topnotch nationally known mediators, and the mediation
19 developed over a period of time, and I'm satisfied that this
20 factor favors settlement.

21 There's always a risk of establishing liability
22 and damages. Notwithstanding class counsel's faith in their
23 case and their abilities, there's always risks in trial.
24 Sylvania has always denied liability and had many defenses,
25 and damages were unclear, especially given the fact that the

1 lightbulbs did have a use despite the claimed alleged
2 misrepresentation. So that whole damage analysis also added
3 a lot of risk to going forward, and that factor and the risk
4 here militates in favor of settlement.

5 Risk of maintaining class action status through
6 trial, manageability. Although manageability is not a
7 concern with settlement classes, differences in state law
8 can complicate certification of a national litigation class.
9 Here, if the class was not certified, there would be few, if
10 any, class members with both resources and financial
11 incentive to pursue claims on their own behalf. I don't see
12 many folks bringing lawsuits over a relatively inexpensive
13 headlight. And going forward, if class certification was
14 denied, I have no doubt that consumers would not get the
15 benefit that they're getting today. And while Plaintiff
16 have pointed out the strength and the likelihood of class
17 certification, that decision was not made, and certainly any
18 decision granting certification would also involve appellate
19 challenges, et cetera. And so that factor militates in
20 favor of approving the settlement.

21 The range of reasonableness of the settlement in
22 light of the best possible recovery. Mr. Keefe said it, and
23 I agree with it, that the Court should look at the
24 settlement within a range of reasonableness. And I am
25 satisfied here that this settlement is extremely reasonable.

1 And when I look at these settlements, I try to step back
2 from everything and look at, what are the claims, and at the
3 end of the day, what is the consumer getting. And to get 70
4 percent of the value, not have to write a letter, have a
5 check just sent to you -- because this case presented the
6 unique ability to get a list of over 90 percent of the
7 purchasers and their addresses directly through the
8 Defendant, and I know from the certifications here that
9 defense counsel really took great pains to ensure that that
10 list and the addresses were as accurate as possible. People
11 move, people change, people pass away. But they went to
12 great lengths to make sure that that list was accurate and
13 that the money would get back into the hands of the people
14 that bought the product.

15 So it's not even close that this factor militates
16 in favor of settlement. If there wasn't a class action, if
17 they went to trial and they succeeded, it's possible that
18 they would have had 100 percent of recovery as opposed to
19 70, and that's if they went to trial and succeeded. So if
20 they had to proceed as individual claims, and they had to
21 pay a lawyer, it's not even close to the \$12 refund, and it
22 may be more than 12 if there's a second round of
23 distribution, which is a very good result, first thing. The
24 second thing, as Mr. Keefe said, going forward, the whole
25 case really turned on misrepresentation of the packaging,

1 and there's an agreement by Sylvania for the future to
2 change and to improve its packaging, and that is a change
3 that has great value to the class and to consumers, even
4 those who didn't partake in the settlement.

5 So those two factors together -- Mr. Keefe pointed
6 out there's no reverter; the money will be redistributed in
7 the second round if the money isn't fully disbursed.

8 So that is a great settlement, one of the better
9 ones I've ever seen, frankly, and I am satisfied that the
10 Girsh factors here strongly favor final approval of the
11 proposed settlement.

12 This is a real recovery for class members.
13 They've been waiting for years for a recovery, which may be
14 nothing or around the same amount anyway, and to have that
15 done without any involvement of the class is huge. It's not
16 only fair and reasonable, but, as Plaintiffs say in their
17 papers, it's a victory for the class. And that's not even a
18 close call.

19 So I'm going to certify it. It's not even a close
20 call for me.

21 I went through notice indirectly in a lot of
22 different ways this morning. I gave preliminarily approval
23 back in August, and postcards went out. The notices were
24 clear, accurate, easy English, and they discussed the
25 settlement.

1 As Mr. Keefe highlighted, there was an exhaustive
2 publication notice, 30-second television spots on 82
3 different networks. There was also publication notice in
4 several national magazines that were specifically targeted,
5 not just generic notices to satisfy the Court, but notices
6 that were targeted to magazines and publications that would
7 attract the potential class members: "ESPN the Magazine,"
8 "Maxim," "Motor Trend," "National Geographic," and "Popular
9 Science." This wasn't just Mr. Keefe's idea or Mr. Eichen's
10 idea, it was experts' ideas, and that was smart publication
11 notice. There was also an Internet advertising and an
12 earned media campaign, Internet banner ads, and, of course,
13 the AutoLightClaims.com web site.

14 So for all those reasons, notice was excellent.

15 The Girsh factors are satisfied. I'm approving
16 the class.

17 Let's talk a little bit about attorneys' fees. I
18 think Mr. Keefe went through it, and why don't you just talk
19 a little bit about the attorneys' fees.

20 MR. KEEFE: Sure. Your Honor, thank you for that
21 opportunity.

22 The application is under a common benefit fund
23 analysis, which is a percentage of the fund, which is the
24 preferred method in cases such as this, in this District and
25 in this Circuit.

1 The one unique factor about this District and this
2 Circuit is still the lodestar crosscheck. So through that
3 prism, we put the fee application before Your Honor, and
4 with the \$30 million common benefit fund, we're requesting
5 33 and a third, a one-third percentage, which is within the
6 range. The range of a non-megafund case is typically 30 to
7 35 percent. We've done our own research. We put that
8 research and case law before Your Honor. We've hired two
9 experts, Professor Fitzpatrick at Vanderbilt, who is a
10 former Justice Scalia law clerk, who is very well written on
11 the topic. So our percentage of the one-third is square in
12 that range.

13 However, that's not enough. We know that our
14 burden is to show you that that percentage fits a reasonable
15 lodestar crosscheck. That crosscheck approximately would
16 result in a 1. -- I believe a 1.6 multiplier. And given the
17 result in this case, we think that is on the lower end of
18 the range, but certainly the percentage is right. So the
19 question is, how does it shape up against the crosscheck.

20 And also, too, as we put in our summaries of time,
21 we spent an inordinate amount of time making sure we could
22 ascertain this class and reviewing a lot of data. We also
23 hired who I believe were terrific experts, and those experts
24 -- it was approximately two-thirds of our total costs, which
25 at the time we put in the fee application was approximately

1 \$277,000. That has gone higher, and those future costs we
2 bear on our own.

3 So in a common fund, the Court looks at
4 percentage. The question is, is the percentage right.
5 We're right in that middle of that 30 to 35 percent.

6 Taking a look at the thousands of hours at
7 rates -- I will note for the Court that we are not using
8 rates just for our class actions; these are rates that we
9 use in our law firms. They're rates that we get on
10 retainer. These are rates that have been approved in this
11 District. So in looking at the crosscheck, the Court can be
12 confident we certify that those are rates that we use and
13 have been approved for in the past.

14 I can tell you as co-lead counsel with Mr. Eichen
15 we were very careful not to have unnecessary duplication.
16 Quite frankly, we're too small of law firms to do
17 duplication. If we were looking at documents, we looked at
18 the documents; if we wrote a brief, we were the folks that
19 wrote the brief. We didn't hire part-time lawyers to help
20 build the lodestar as folks who are critical of class
21 actions do. This is the hardworking team right here, and
22 I'm very confident that our lodestar in the crosscheck that
23 you would do would be reasonable.

24 With respect to the fee application, the litmus
25 test is the public. If you find it's reasonable, what would

1 other folks think about it? The absence of objections to
2 the fee request favors its approval. And I think just as a
3 matter of clarity for the record, Your Honor made note of
4 the tremendous results of notice.

5 I just want to be clear that the third-party
6 discovery was the third-party discovery of the largest
7 retailers. Those retailers comprise 97 percent of retail --

8 THE COURT: That's right. Of course.

9 MR. KEEFE: -- and the results are the millions of
10 consumers that we see here today.

11 THE COURT: What about the incentive awards,
12 Mr. Keefe?

13 MR. KEEFE: Right. The incentive awards, again,
14 Mr. Chaudhri was the Plaintiff. Mr. Chaudhri came to
15 Mr. Paciorkowski at Mr. Eichen's firm, and he worked very
16 carefully with the lawyers in this case and our research,
17 and based upon what he did, we're requesting a \$10,000
18 incentive award, since he really and truly was the lead
19 Plaintiff.

20 We make distinctions between the other class
21 representatives for the very simple reason that, although
22 they were cooperative and they did buy covered bulbs and
23 they were prepared based upon a choice of law analysis if we
24 didn't get national certification here that we were going to
25 file another jurisdiction and, in fact, did file in some

1 other jurisdictions, but those folks certainly didn't do
2 what Mr. Chaudhri did. We think it's reasonable and we
3 think it's appropriate that Mr. Chaudhri -- he did earn with
4 his many hours of work with us the fee award that -- the
5 incentive award we're requesting.

6 THE COURT: And that's \$10,000 for him and \$1,500
7 for the others.

8 MR. KEEFE: That's correct.

9 THE COURT: How many others are there? Four?

10 MR. KEEFE: Let me check our notes.

11 I think there are six.

12 THE COURT: Six? Okay.

13 MR. KEEFE: I had it written down, but I didn't
14 bring it with me. Yes, we have six. Six.

15 THE COURT: Okay.

16 MR. KEEFE: And so we make the distinction with
17 purpose, Your Honor. There is clearly division, and they
18 all understood and certified to Your Honor that they
19 understood what we were requesting and why.

20 And I believe, just, again, for the record, that
21 there were 14,600 hours expended by all of the lawyers in
22 this case. It's a multiplier, as I said, of approximately
23 1.5 to 1.6, all within the ranges, all supported by not only
24 the case law and our experts, but by the litmus test of what
25 the public thinks about this as well.

1 THE COURT: Thank you.

2 Okay. So, there are two ways to pay attorneys.

3 One is lodestar, one is a percentage.

4 And in the Gunter case, the 3rd Circuit talked
5 about the factors that a court should consider in granting a
6 fee award and the percentage of recovery: The size of the
7 fund created, the number of persons benefiting from the
8 settlement, the presence or absence of substantial
9 objections, the skill of Plaintiff's counsel, complexity and
10 duration of the litigation, the risk of nonpayment, the
11 amount of time devoted, and awards in other cases.

12 A lot of these factors overlap. A lot of these
13 factors I've already addressed in large part by discussing
14 the Girsh factors, but there are certain facts I'd like to
15 highlight in approving the fee.

16 Just to reiterate what counsel, Mr. Keefe, just
17 explained, there was a huge initial investigation of the
18 case. There was a lot of research on complex series of law.
19 There was consultation with experts on liability and damages
20 as well, lots of documents reviewed, and those documents
21 were reviewed in consultation with experts. There were many
22 mediations, settlement negotiations, and ultimately resulted
23 in the draft of a settlement agreement.

24 I am very satisfied with the quality of the
25 opposing counsel and counsel that are seeking the fee.

CHARLES P. McGUIRE, C.C.R.

1 This case, although I am very aware that Mr. Keefe and
2 Mr. Eichen are from New Jersey firms, it reaffirms my view
3 that the New Jersey lawyers are as good as any lawyers in
4 the country, and the way they have handled this case
5 professionally, in terms of everything from the objectors to
6 the quality of their briefs to the quality of the oral
7 presentations, satisfies me that they are the best at what
8 they do and that they worked very hard for this fee, and
9 that really is, you know, at the core, in a percentage, you
10 look at the amounts, you look at how much fees were earned,
11 and you look at what's a reasonable multiplier, and against
12 that backdrop, you look at what the lawyers did and how good
13 they were at what they did. I see uneven quality of
14 litigation in Federal Courts all the time, and I always make
15 it a point to commend the lawyers that do the real A-plus
16 work. And I am satisfied, just from the way you've
17 conducted yourselves from day one before me, that you have
18 worked very hard and diligently and ethically and
19 professionally. Despite what other people may say about
20 class actions in other contexts, I look at every case
21 separately, I look at lawyers very carefully, and this is a
22 case where the lawyers really did a nice job on both sides,
23 and they worked together the way professionals should work
24 together to solve a complicated case. And that, really, is
25 at the core is what I looked at as a backdrop to evaluate

1 the factors that are required by the 3rd Circuit.

2 So let me just go through them with a little bit
3 of detail.

4 As I said earlier, the settlement is an
5 outstanding result. There's a \$30 million settlement.
6 Class members are getting a substantial benefit. There's
7 going to be also a change in packaging, which is really what
8 is at the core of the claims here.

9 There's a deduction for reasonable expenses, and
10 there were many expenses here, particularly consultation
11 with experts, which up until last night it's clear to me
12 that the lawyers were continuing to consult with, and that
13 comes out of their payment, and they did that to make my job
14 easier and to really address every single concern that the
15 Court had, and I appreciate that.

16 There's no reverter for unclaimed funds. The
17 funds are going back to the folks who were part of the
18 class. That is a substantial aspect of the settlement.

19 I talked a little bit about experts. I didn't
20 talk about them by name. The Plaintiff's counsel retained
21 John Beyer, Ph.D., to prepare an economic analysis of class
22 representative and class damages. He again had to review
23 lots of documents and discovery as well as other publicly
24 available documents and economic literature about the
25 automotive aftermarket headlights industry, microeconomics,

1 industrial organization, consumer behavior, and based on
2 that, Sylvania agreed, as we talked about many times this
3 morning, to change its marketing information and packaging
4 information.

5 There's no objection to the attorneys' fees here.
6 Lots of people got notice. Notice was given through a lot
7 of media channels, including television spots, various
8 publications and web site banners, et cetera, and there were
9 no objections. That I guess we can look at a little bit in
10 a general sense there was an objection by Mr. Morrison, but
11 I dealt with that earlier, and other than him, there has
12 been no objection at all. That factor militates in favor of
13 approving the attorneys' fees.

14 The risk of nonpayment favors approval of the
15 requested fees as well. Class counsel faced substantial
16 risk of nonpayment for the motion to dismiss and were
17 vigorously challenged during those motions for class
18 certification and summary judgment. Sylvania could have
19 prevailed. There was a lot of steps along the way, a lot of
20 hurdles that were not jumped, and despite those risks, class
21 counsel forged a significant resolution that provides
22 substantial relief to the class.

23 Mr. Keefe talked briefly about the requested
24 percentage of recovery and viewing it against the amount of
25 time devoted to legal services. After determining the

1 lodestar, the Court may adjust the fee using a multiplier.
2 The lodestar multiplier attempts to account for the
3 contingent work or risks involved in a particular case.

4 Here, class counsel and supporting counsel have
5 certified to their hours and rates in prosecuting this
6 action. The current lodestar rate was as of a while ago
7 6.5 million, I'm sure that it's more than that now,
8 resulting from 14,600 hours expended by counsel. The
9 requested attorneys' fees would result in a multiplier of
10 1.5. This is well within the 3rd Circuit's range. I should
11 note that the lodestar does not include the time that will
12 be spent going forward in preparing -- did not include -- as
13 I said earlier, the number is even greater because it
14 doesn't include preparing and presenting arguments for final
15 approval, defending the claims raised by Mr. Morrison at the
16 11th hour, so in all likelihood, the multiplier is probably
17 slightly less than 1.5.

18 It's also reasonable compared to other, similar
19 cases. There's no general rule, as we know.

20 But using the percentage of the fund method, we're
21 at 25, 30, and 33 percent, with only two-thirds of awards
22 between 25 and 50 -- and 35 percent.

23 This range is certainly within the range of other
24 settlements, as demonstrated by the affidavits that I
25 received and reviewed. It was also consistent with the

1 private marketplace, where attorneys negotiate contingency
2 fee agreements. If this was not a class action, the
3 customary contingency fee would range from 30 to 40 percent,
4 and that is within the range here.

5 Therefore, I am satisfied that the fee is
6 reasonable.

7 I think that the incentive awards are also very
8 modest and reasonable for the reasons expressed by
9 Mr. Keefe, and I will agree and approve the award for
10 Mr. Chaudhri of \$10,000 and class representatives Deidra
11 Ross, Richard Smith, Larry Byrd --

12 Is that the famous Larry Byrd?

13 MR. KEEFE: It is not, unfortunately.

14 THE COURT: Okay. I would like to meet him if he
15 was here.

16 MR. KEEFE: Still a worthy Larry Byrd.

17 THE COURT: Okay. Larry Byrd bought headlights.

18 MR. KEEFE: That's right.

19 THE COURT: Okay -- David Christopher, Derek Hahn,
20 and Lee S. Kelly.

21 I will sign the order today, and it will be
22 electronically filed online before the snowstorm hits.

23 Anything further, anyone?

24 MR. KEEFE: Just one housekeeping item, Your
25 Honor.

1 The objection that was filed last night and which
2 we opposed I believe generated an ECF by the clerk stating
3 that that motion would be returnable in about a month. I
4 think Your Honor has dealt with that.

5 THE COURT: Yes, well, I did, and I'll clarify
6 that. I will do a text order today saying that Mr. Vullings
7 was given notice by my staff today of the necessity to
8 participate in today's hearing and he waived his right to do
9 so, and I'll clarify that with a text order.

10 MR. KEEFE: Very good.

11 THE COURT: Okay?

12 MR. KEEFE: Yes.

13 THE COURT: Have a great day, gentlemen. Thank
14 you for coming in.

15 MR. KEEFE: Thank you very much.

16 THE COURT CLERK: All rise.

17 (Matter concluded)

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Exhibit “B”

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IMRAN CHAUDHRI, individually,
and on behalf of all others similarly situated,

Plaintiff,

- against -

OSRAM SYLVANIA, INC., and OSRAM
SYLVANIA PRODUCTS, INC.,

Defendants.

Civil Action No.

2:11-CV-05504-SDW-MCA

CLASS ACTION
SETTLEMENT AGREEMENT

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Agreement") is entered into on this 27th day of June, 2014, by and between the Class Representatives in their individual and representative capacities ("Plaintiffs") and Defendant OSRAM SYLVANIA, INC. ("Sylvania" and, collectively with Plaintiffs, the "Settling Parties"), and their counsel. Each of the Settling Parties stipulates and agrees that, in consideration of the promises and covenants set forth in this Agreement and upon the Court's entry of an Order and Final Judgment granting Final Approval to this Agreement, this lawsuit and the matters raised in the litigation are hereby settled, compromised, and dismissed on the merits and with prejudice, on the terms and conditions set forth herein ("Settlement").

RECITALS

I. PROCEDURAL BACKGROUND

WHEREAS, on September 22, 2011, Plaintiff Imran Chaudhri filed a Complaint against Sylvania in the United States District Court for the District of New Jersey, *Chaudhri v. OSRAM*

SYLVANIA, INC., et al., Civil Action No. 2:11-cv-05504-SDW-MCA, seeking certification of a class action asserting claims for breach of the New Jersey Consumer Fraud Act ("NJCFA"), N.J.S.A. §§ 56:8-1, *et seq.*, unjust enrichment, misrepresentation, negligent misrepresentation, and breach of express warranty (the "Complaint"). Dkt. 1.¹

WHEREAS, on December 5, 2011, Sylvania moved to dismiss the Complaint, Dkt. 7; and

WHEREAS, on January 9, 2012, Plaintiff Imran Chaudhri filed an Amended Complaint, again seeking certification of a class action asserting claims for breach of the NJCFA, common law fraud, unjust enrichment, negligent misrepresentation, and breach of express warranty, Dkt. 11; and

WHEREAS, the Amended Complaint alleges that Sylvania's claims regarding the performance of certain premium automotive lighting produced by Sylvania are and were misleading and deceptive, *Id.*; and

WHEREAS, the Amended Complaint alleges that Sylvania made such representations in advertising and on the packaging of its products to Plaintiffs and other consumers, *Id.*; and

WHEREAS, on February 13, 2012, Sylvania moved to dismiss the Amended Complaint, Dkt. 14, which Plaintiff Imran Chaudhri opposed on March 26, 2012, Dkt. 19; and

WHEREAS, on June 14, 2012, the Honorable Susan D. Wigenton granted Sylvania's motion to dismiss in part and denied Sylvania's motion to dismiss in part, dismissing Plaintiff Imran Chaudhri's unjust enrichment claim but allowing his other claims to proceed, Dkt. 24; and

WHEREAS, on September 7, 2012, the Sylvania and Plaintiff Imran Chaudhri served requests for production of documents and interrogatories on another; and

¹ All citations to "Dkt. ___" are to docket entries in the Action.

WHEREAS, Plaintiff Imran Chaudhri responded to Sylvania's requests for production and interrogatories on October 8, 2012, and thereafter, and Sylvania responded to Plaintiff Imran Chaudhri's requests for production and interrogatories on October 12, 2012, and thereafter; and

WHEREAS, to date, Sylvania has produced a substantial amount of documents in response to Plaintiff Imran Chaudhri's requests for production, in addition to voluminous electronic data that is not separately paginated; and

WHEREAS, on December 5, 2012, Plaintiff Imran Chaudhri served Sylvania with two deposition notices pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure; and

WHEREAS, although Sylvania contested the propriety and scope of the 30(b)(6) deposition, Sylvania produced a 30(b)(6) deponent to testify about certain topics on December 21, 2012; and

WHEREAS, on January 24, 2013, Plaintiff Imran Chaudhri served Sylvania with requests for admission, to which Sylvania responded on February 28, 2013; and

WHEREAS, on May 15, 2013, Plaintiff Imran Chaudhri served Sylvania with a second set of requests for admission, to which Sylvania responded on June 17, 2013; and

WHEREAS, on June 7, 2013, Sylvania served Plaintiff Imran Chaudhri with a notice of inspection of his vehicle pursuant to Rule 26 and 34 of the Federal Rules of Civil Procedure, which inspection was conducted on June 13, 2013; and

WHEREAS, on June 11, 2013, Sylvania served Plaintiff Imran Chaudhri's brother, Al Chaudhri, with a subpoena to testify by deposition, which deposition was taken on June 18, 2013; and

WHEREAS, on June 17, 21, and 25, 2013, Sylvania served Plaintiff Imran Chaudhri with requests for admission, to which he responded on July 17, 22, and 25, 2013, respectively; and

WHEREAS, Plaintiff Imran Chaudhri served third-party subpoenas for documents on Sylvania's retailers, which retailers are believed to represent in excess of 90% of the volume of Covered Products distributed in the United States, and received millions of lines of data regarding sales data and class member identification; and

WHEREAS, Sylvania and Plaintiff Imran Chaudhri agreed to mediate their dispute and participated in two days of in-person mediation on December 11 and 12, 2013, before a nationally-recognized mediator (the "First Mediation"), without, however, reaching a settlement agreement; and

WHEREAS, after the First Mediation, Sylvania and Plaintiff Imran Chaudhri, through their counsel, engaged in several settlement discussions by phone and in person between January 2014 and April 2014, without, however, reaching a settlement agreement; and

WHEREAS, Sylvania and Imran Chaudhri agreed to attempt another mediation of their dispute and participated in one mediation session involving Plaintiff Imran Chaudhri's lead counsel only, one mediation session involving Sylvania's counsel only, and two days of joint in-person mediation on May 7 and 8, 2014, before mediators Jonathan J. Lerner, Esq. and Stephen M. Greenberg, Esq. of Pilgrim Mediation Group (the "Second Mediation"); and

WHEREAS, the Second Mediation resulted in an agreement on the principles reflected in this Agreement, which Plaintiffs and Class Counsel believe provides substantial and valuable benefits to the class; is fair, reasonable, and adequate in light of the nature of the claims and risks of litigation; and is in the best interests of Plaintiffs and the Settlement Class Members²; and

WHEREAS, Sylvania has denied and continues to deny any wrongdoing or liability in this Action and stands by its products and advertising; and

² All capitalized terms not contemporaneously defined are defined herein at Section II.

WHEREAS, Class Counsel have conducted an investigation, which included discovery of Sylvania's advertising and marketing referred to in the Amended Complaint and an examination of the facts and law relating to the claims against and the defenses of Sylvania; and

WHEREAS, based upon the discovery taken to date, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, and assistance of mediators, the Settling Parties have agreed to settle the claims asserted in the Action pursuant to the provisions of this Agreement, after having considered numerous risks of continued litigation and other factors, including but not limited to:

- A. The complexity, expense and likely duration of litigating the Action;
- B. The current stage of proceedings in the case;
- C. The risks of establishing liability;
- D. The risks of establishing damages;
- E. The risks of maintaining the class action through trial;
- F. The uncertainty of outcome at trial and the possibility of an appeal by either side following trial;
- G. The substantial benefits being made available to Plaintiffs and the Settlement Class Members under the terms of this Agreement; and

WHEREAS, weighing the above factors, as well as all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Settling Parties are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class Members; and

WHEREAS, Sylvania expressly disclaims any liability or wrongdoing of any kind whatsoever, but nevertheless considers it desirable that the Action be resolved upon the terms

and conditions set forth in this Agreement in order to avoid the expense, risk, uncertainty, and interference with ongoing business operations inherent in any litigation, and to put to rest and obtain its peace, forever, from all claims that will be barred by the releases described herein;

NOW, THEREFORE, subject to and conditioned on the Court's Final Approval, as required herein and by applicable law and rules, the Settling Parties agree, in consideration of the mutual promises and covenants contained herein, that any Released Claims against Sylvania shall be settled, compromised, and forever released upon the following terms and conditions.

TERMS AND CONDITIONS OF SETTLEMENT

II. DEFINITIONS

1. As used in this Agreement and the exhibits attached hereto, in addition to any definitions set forth elsewhere in this Agreement, the following terms shall have the meanings set forth below:

A. "Action" means the civil action filed under the caption *Chaudhri v. OSRAM SYLVANIA, INC., et al.* Civil Action No. 2:11-CV-05504-SDW-MCA, in the United States District Court for the District of New Jersey.

B. "Cash Settlement Amount" shall be the \$30,000,000 which shall be deposited by Sylvania into the settlement fund as described in Paragraph 22 of this Agreement on the terms and conditions set forth herein.

C. "Claim Form" means the document in the form of Exhibit A hereto (which is incorporated herein), but which may be modified as necessary to comply with the provisions of any order of Preliminary Approval entered by the Court.

D. "Claimant" means a Settlement Class Member who: (1) can be identified in records produced in the Action for the Class Period; or (2) submits a claim to the Claims Administrator.

E. "Claims Administration Expenses" means the expenses incurred by the Claims Administrator, among other things, in the publication of Class Notice, establishment and maintenance of the Settlement Website and other communication and notice methods with Settlement Class Members, and the processing, handling, reviewing, and paying of claims made by Claimants.

F. "Claims Administrator" means the Person selected by the Settling Parties and approved by the Court to oversee, among other things, publication of Class Notice, the Settlement Website, and other communication and notice methods with Settlement Class Members, and the processing, handling, reviewing, approving, and paying of claims made by Claimants.

G. "Claims Period" means the time period during which Settlement Class Members may submit Claim Forms, which shall be limited to the sixty (60) days (not including the day of the event) following the later of (i) the initial publication of the Class Notice; (ii) establishment of the Settlement Website; or (iii) completion of direct notice to those who can be identified in records produced in the Action for the Class Period.

H. "Class Counsel" means Barry R. Eichen, Esq. from the law firm Eichen Crutchlow Zaslow & McElroy, LLP and John E. Keefe, Jr., Esq. from the law firm Keefe Bartels, LLC.

I. "Class Notice" means the Court-approved notices of this Agreement that are directed to Settlement Class Members.

J. "Class Period" means any date from September 22, 2005 through the date of Preliminary Approval.

K. "Class Representative" means one or more individuals who were named or have been proposed to the Court to be named in this Action as plaintiffs for purposes of settlement, and includes Imran Chaudhri, Lee S. Kelly, Derek Hahn, David Christopher, Larry Byrd, Richard Smith, and Deidra Ross.

L. "Court" means the United States District Court for the District of New Jersey.

M. "Covered Products" means (i) SilverStar® ULTRA, SilverStar®, XtraVision®, or Cool Blue® replacement headlight capsules; (ii) SilverStar®, XtraVision®, or Cool Blue® sealed beam headlights; or (iii) SilverStar® fog or auxiliary lights.

N. "Defense Counsel" means the law firms of Kirkland & Ellis LLP and Blank Rome LLP.

O. "Effective Date" means the date occurring thirty-five (35) days after the last to occur of: (i) the expiration of the time period for an appeal as of right from the Final Approval, if no appeal has been filed; and (ii) the affirmance of Final Approval, or dismissal or withdrawal of all appeals filed from the Final Approval, and the expiration of the time for filing or the denial of all petitions for writs of certiorari or, if certiorari is granted, the date of affirmance of the Final Approval.

P. "Fairness Hearing" means the hearing to be conducted by the Court to finally determine the fairness, adequacy, and reasonableness of this Agreement.

Q. "Fee Award" means any award of fees and costs sought by the application to and approved by the Court that is payable to Class Counsel, as described in Paragraphs 34 through 39 of this Agreement.

R. "Final Approval" means the Court's entry of an Order and Final Judgment following the Fairness Hearing finally certifying the class of Settlement Class Members, finally approving this Agreement, and permanently enjoining the commencement or continued prosecution by any Releasing Party of any Released Claim against Sylvania;

S. "Gross Settlement Fund" means the Cash Settlement Amount and any interest earned thereon.

T. "Incentive Award" means any award sought by application to and approved by the Court that is payable to any Class Representative from the Gross Settlement Fund.

U. "Net Settlement Fund" means the Gross Settlement Fund, less Claims Administration Expenses, Notice Expenses, any Fee Award, reimbursement of expenses, any Incentive Award, taxes on interest earned by the Cash Settlement Amount, and tax expenses.

V. "Notice Expenses" includes all reasonable costs and expenses expended in publishing the Class Notice and providing notice to the appropriate State and Federal officials, including but not limited to: (i) preparing, printing, mailing, disseminating, posting, promoting, internet housing, and publishing of the Class Notice; (ii) obtaining any expert opinions regarding the sufficiency of notice program; and (iii) any other necessary notice or notice-related activities.

W. "Notice of Missing Information" means the notice sent by the Claims Administrator to a Settlement Class Member who has submitted a Claim Form with incomplete or missing information that is required for the Settlement Class Member to be considered eligible for the class relief provided by this Settlement.

X. "Objection" is the written communication that a Settlement Class Member may file with the Court in order to object to this Agreement, as provided in Paragraphs 15 through 17 of this Agreement.

Y. "Objector" is any Settlement Class Member filing an Objection, as provided in Paragraphs 15 through 17 of this Agreement.

Z. "Order and Final Judgment" means the final order to be entered by the Court approving the Settlement pursuant to the terms and conditions of this Agreement, confirming the certification of the class of Settlement Class Members, dismissing the Action with prejudice, releasing claims, and otherwise directing as the Court or the Settling Parties deem necessary and appropriate to effectuate the terms and conditions of this Agreement.

AA. "Person" means any individual, corporation, trust, partnership, limited liability company, or other legal entity, and its respective successors or assigns.

BB. "Plaintiffs' Counsel" has the same meaning as Class Counsel.

CC. "Preliminary Approval" means the Court's entry of an order approving the timing, content, and manner of Class Notice, conditionally certifying the class of Settlement Class Members, preliminarily approving this Agreement, and enjoining the commencement or continued prosecution by any Releasing Party of any Released Claim against Sylvania.

DD. "Proof of Purchase" means a receipt, credit card record, document, or product packaging that identifies the purchase of one or more of the Covered Products, or possession of a Covered Product.

EE. "Related Action" means any action, lawsuit, complaint, or other legal proceeding filed in another state or federal court asserting claims and alleging facts substantially similar to those asserted and alleged in this Action, including but not limited to *Kelly v. Osram Sylvania, Inc.*, No. 0:13-cv-62606-WJZ (S.D. Fla.).

FF. "Released Claim" means any claim, cross-claim, liability, right, demand, suit, matter, obligation, damages, restitution, disgorgement, loss or cost, attorney's fee or expense, and action or cause of action of any kind and description that any Releasing Party had or has during the Class Period, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that is, has been, could reasonably have been, or in the future might reasonably be asserted by any Releasing Party in any action or proceeding in any court or forum, regardless of legal theory or the law under which such action may be brought, and regardless of the type or amount of relief or damages claimed, against Sylvania arising out of or relating to the allegations in the Complaint, Amended Complaint, or Sylvania's marketing, advertising, or packaging for the Covered Products during the Class Period, including but not limited to all claims that were brought or could have been brought in this Action or a Related Action. The Released Claims do not include any claims for personal injury or products liability, though the Parties and their counsel represent that they are not aware of the existence of any such personal injury or products liability claims related to the Covered Products.

GG. "Releasing Party" means Plaintiffs, each Settlement Class Member, and any Person claiming by or through Plaintiffs or a Settlement Class Member, including as his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee, or affiliate.

HH. "Request for Exclusion" means the written communication that a Settlement Class Member may submit to the Claims Administrator to be excluded from the Settlement, as provided in Paragraphs 19 through 21.

II. "Settlement Class" means all persons or entities in the United States and its territories who purchased one or more Covered Products in any U.S. state, territory, or possession at any time during the Class Period, other than for resale or distribution to another person or entity, and who do not timely seek exclusion pursuant to Paragraphs 19 through 21 of this Agreement. Excluded from the Settlement Class are: Sylvania; Sylvania's current or former employees, officers, and directors; Defense Counsel; any judge presiding over this Action or any Related Action; or any immediate family member of such persons.

JJ. "Settlement Class Member" means any person falling within the Settlement Class.

KK. "Settlement Website" means the dedicated website to be administered by the Claims Administrator for purposes of receiving Claim Forms and providing notice and other information regarding this Agreement to Settlement Class Members and others.

LL. "Sylvania" means OSRAM SYLVANIA, INC. (formerly known as OSRAM SYLVANIA PRODUCTS, Inc., on its own behalf and as successor to the

corporation named OSRAM SYLVANIA, INC. which was merged into the surviving corporation, OSRAM SYLVANIA PRODUCTS, INC., before that surviving corporation was renamed OSRAM SYLVANIA, INC.), and any of its present and former parents, predecessors, successors, affiliates, agents, assigns, directors, representatives, employees, divisions, and departments.

III. PRELIMINARY APPROVAL

Motion for Preliminary Approval

2. Following execution of this Agreement, Class Counsel shall promptly submit this Agreement to the Court and petition the Court for an order that: (1) appoints Plaintiff to represent the Settlement Class; (2) appoints Class Counsel to represent the Settlement Class; (3) conditionally certifies the Settlement Class under Federal Rule of Civil Procedure 23 for settlement purposes only; (4) appoints Rust Consulting, Inc. as the Claims Administrator; (5) preliminarily approves this Agreement for purposes of issuing Class Notice; (6) approves the timing, content, and manner of Class Notice; (7) enjoins the commencement or continued prosecution of any action, including this Action and any Related Action, by any Releasing Party of any Released Claim against Sylvania; (8) schedules the Fairness Hearing; and (9) makes such orders as are necessary and appropriate to effectuate the terms and conditions of this Agreement.

Stay of this Action

3. Following Preliminary Approval, all activity in the Action shall be stayed, except to the extent necessary to effectuate this Agreement, unless and until this Agreement is terminated pursuant to its terms and conditions.

4. Upon Preliminary Approval, the commencement or continued prosecution of any Related Action shall be enjoined.

Cooperation

5. The Settling Parties shall cooperate in good faith and undertake all reasonable actions and steps to carry out the terms and conditions in this Agreement.

IV. NOTICE

Cost of Notice

6. All Notice Expenses shall be paid from the Cash Settlement Amount, as described in Paragraphs 8 through 9 and 29 through 30.

Notice to State and Federal Officials

7. In compliance with the attorney general notification provision of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, within ten (10) days after the motion for Preliminary Approval is filed, Sylvania shall provide or cause to be provided notice of this proposed Settlement to the Attorney General of the United States and to the attorneys general of each state or territory in which a Settlement Class Member resides. Sylvania shall file with the Court a certification stating the date(s) on which the CAFA notices were sent and shall provide Class Counsel with any substantive responses received in response to any CAFA notice.

Notice to Settlement Class Members

8. Upon Preliminary Approval of this Agreement, Plaintiffs and Class Counsel shall cause the Class Notice to be made as follows:

A. Direct Notice. Direct notice will be sent to persons who, in the Claims Administrator's judgment, can be identified as Settlement Class Members in records produced in the Action, at such persons' email or mail address that can be identified in or derived from information in the records produced.

B. Publication Notice. The Claims Administrator will cause the Class Notice, in the form approved by the Court in its order of Preliminary Approval, to be

published within thirty days (30) days of, but not before, Preliminary Approval in the Action.

C. Website Notice. The Claims Administrator shall establish Settlement Websites in English and Spanish for the purposes of disseminating the Class Notice, this Agreement, pleadings, and information relevant to the Settlement, including information relating to filing a claim, opting out of the Settlement, objecting to the Settlement, and deadlines relating to the Settlement. The Claims Administrator shall establish the Settlement Websites within thirty (30) days of Preliminary Approval in the Action. The Settlement Websites shall also include an electronic Claim Form to allow on-line submission of claims, as well as a Claim Form that can be downloaded, printed, and mailed to the Claims Administrator.

D. Notice on Class Counsel's Websites. Class Counsel shall post on their respective websites a copy of the Class Notice and a link to the Settlement Website.

E. Toll-Free Telephone Number and Email Address. The Claims Administrator shall establish and maintain a toll-free number and email address for communication with Class Members.

Contents of Notice

9. The Class Notice shall: (1) advise Settlement Class Members of their rights, including the right to opt-out from or object to this Agreement, and the applicable procedures for doing so; (2) direct Settlement Class Members to the Settlement Website; (3) provide instructions for contacting Class Counsel and the Claims Administrator to obtain a paper Claim Form or otherwise; (4) advise Settlement Class Members that objections to the Agreement and papers submitted in support of such objections shall only be considered at the Fairness Hearing if they are submitted pursuant to the procedures set forth in Paragraphs 15 through 17 of this

Agreement; (5) advise Settlement Class Members that the time and place of the Fairness Hearing may change and will be posted on the Settlement Website; and (6) contain any other information agreed to by the Settling Parties. The Class Notice and related settlement papers, including the Claim Form, shall be available on the website in Spanish.

V. ELIGIBILITY FOR RELIEF

10. To be eligible to receive the relief identified in Paragraph 31, Settlement Class Members must be either (a) identified in records produced in the Action for the Class Period; or (b) submit a claim to the Claims Administrator by *either*: (i) completing, certifying, and mailing the Claim Form included with the Class Notice to the Claims Administrator; or (ii) electronically completing, certifying, and emailing the Claim Form on the Settlement Website to the Claims Administrator.

11. The Claim Form must be postmarked or submitted electronically no later than the last day of the Claims Period. Claim Forms postmarked or submitted electronically after the end of the applicable Claims Period shall be denied by the Claims Administrator, and the Claims Administrator shall not make any payment on such claims. The Settling Parties shall take all reasonable steps, and direct the Claims Administrator to take all reasonable steps, to ensure that Claim Forms completed and signed electronically by Settlement Class Members conform to the requirements of the federal Electronic Signatures Act, 15 U.S.C. § 7001, *et seq.* Copies of late Claim Forms shall be submitted to Class Counsel. Class Counsel may request consent from Sylvania to have any late Claim Forms deemed timely. If consent is not provided, Class Counsel may seek Court review upon written letter copied to Sylvania.

Review of Claims

12. The Claims Administrator shall review all submitted Claim Forms within a reasonable time to determine each Settlement Class Member's eligibility for relief, and the

amount of any such relief. Copies of submitted Claim Forms and a list of those Class Members who can be identified in records produced in the Action for the Class Period shall be provided to Sylvania and to Class Counsel upon request. Settlement Class Members submitting completed Claim Forms shall be entitled to the relief identified in Paragraph 31, unless the Claims Administrator believes, in good faith, that available information shows the person in question does not satisfy eligibility criteria or that material facts identified in the Claim Form is/are fraudulent or materially inaccurate. Within thirty (30) days after the Claims Period ends, the Claims Administrator shall submit a report to Class Counsel regarding all claims made, the proposed disposition thereof, and the basis for rejection of any claims. The Claims Administrator also will notify each Claimant whose Claim is rejected after approval of the rejection by Class Counsel. Class Counsel may request consent from Sylvania to have any denied Claims deemed approved. If consent is not provided, Class Counsel may seek Court review upon written letter copied to Sylvania.

13. Any Claimant whose claim is rejected may seek reconsideration by contacting the Claims Administrator. Completed Claim Forms that are timely submitted to the Claims Administrator and that the Claims Administrator does not believe to be fraudulent or materially inaccurate shall be deemed Accepted Claim Forms.

Incomplete Claim Forms

14. The Claims Administrator will notify Class Counsel of any incomplete Claim Forms. The Claims Administrator will also notify the Claimant in writing by certified mail of the specific areas or information that are incomplete on the Claim Form. The Claimant shall have fourteen (14) days to provide any missing or incomplete information to the Claims Administrator. If the Claimant does not provide such information within fourteen (14) days, the claim shall be considered rejected and subject to the provisions of Paragraphs 12 and 13.

VI. OBJECTIONS AND OPT-OUTS

Objections

15. Settlement Class Members shall have the right to appear and show cause if they have any reason why the terms of this Agreement should not be granted Final Approval. Any objection must be in writing and filed with the Court, with copies delivered to Class Counsel and Defense Counsel at the addresses set forth in the Class Notice, no later than thirty (30) days after the Motion for Final Approval is filed. Settlement Class Members may object either on their own or through an attorney hired at their own expense.

16. No Settlement Class Member represented by an attorney shall be deemed to have objected to the Agreement unless an objection signed by the Settlement Class Member himself or herself also is filed with the Court and served upon Class Counsel and Defense Counsel at the addresses set forth in the Class Notice at least thirty (30) days after the Motion for Final Approval is filed.

17. Any objection regarding or related to the Agreement shall contain a caption or title that identifies it as "Objection to Class Settlement in *Chaudhri v. OSRAM SYLVANIA, INC.*, Civil Action No. 2:11-CV-05504" and information sufficient to identify and contact the objecting Settlement Class Member (or his or her attorney, if any), as well as a clear and concise statement of the Settlement Class Member's objection, the legal grounds on which the objection is based, and documents sufficient to establish the basis for his or her standing as a Settlement Class Member, *i.e.*, Proof of Purchase or verification under oath as to their purchase(s) of the Covered Products. Any objecting Settlement Class Member who wishes to appear at the Fairness Hearing, whether in person or through an attorney, shall file with the Court a notice of his or her intention to appear. Such notice must be filed at least fourteen (14) days before the

date set for the Fairness Hearing and must include the name, address, and telephone number of the Settlement Class Member and any attorney who will appear on his or her behalf.

Right to Respond to Objections

18. Class Counsel and Sylvania shall have the right to respond to any objection no later than seven (7) days prior to the date set for the Fairness Hearing. The Settling Party so responding shall file a copy of the response with the Court and serve a copy by regular mail, hand delivery, or overnight delivery on the objecting party or his or her counsel, and on Class Counsel or Defense Counsel.

Opt-Outs

19. Any person who would otherwise be a Settlement Class Member who does not wish to participate in this Settlement must write to the Claims Administrator stating an intention to be "excluded" from this Settlement no later than the last day of the Claims Period. The written Request for Exclusion must be sent via first class United States mail to the Claims Administrator at the address set forth in the Class Notice and postmarked no later than the last day of the Claims Period. The Request for Exclusion must be personally signed by the person who wishes to opt out. So-called "mass" or "class" opt-outs shall not be allowed.

20. Any Settlement Class Member who does not request to be "excluded" from the Settlement has the right to object to the Settlement. Any Settlement Class Member who wishes to object must timely submit an objection pursuant to Paragraphs 15 through 17 of this Agreement. If a person who would otherwise be a Settlement Class Member submits both an objection and a written Request for Exclusion, he or she shall be deemed to have complied with the terms of the opt-out procedure, and shall not be bound by the Agreement, if approved by the Court.

21. Upon Final Approval of the Settlement, any Settlement Class Member who has not timely requested to be "excluded" from the Settlement shall be bound by the terms of the Agreement.

VII. SETTLEMENT CONSIDERATION FROM SYLVANIA

Settlement Fund

22. Conditioned on the approvals stated below with respect to each payment, Sylvania shall deposit or transfer a total of \$30,000,000 (the "Cash Settlement Amount"), and no more, into escrow in an interest-bearing account established by the Claims Administrator and for the benefit of Plaintiffs and the Settlement Class Members, and conditionally for the benefit of and return to Sylvania if this Agreement is terminated, Final Approval is not granted or is reversed or vacated by court order through appeal, review or other judicial proceeding. Such deposit or transfer shall be made by two payments, which will together total the Cash Settlement Amount and no more, into the escrow account: (a) the first, a portion of the Cash Settlement Amount in an amount not to exceed \$2,650,000, conditioned on and within fourteen (14) days after the entry of an order granting Preliminary Approval of the Settlement and receipt from the Claims Administrator of wire transfer instructions, tax identification number associated with the escrow fund, and physical address of the bank which will hold the interest-bearing escrow account; and (b) the second, in an amount equal to the Cash Settlement Amount less the sum deposited pursuant to this Paragraph 22, subpart (a), conditioned on and within thirty (30) days after the entry of an order granting Final Approval.

23. The Cash Settlement Amount and any interest or investment returns earned thereon shall be the "Gross Settlement Fund." Except as provided for in Paragraphs 29 and 30 of this Agreement, prior to the Effective Date, no withdrawal or payment from the Gross Settlement Fund may be made by or to any Person without the prior written consent of Sylvania.

24. Plaintiffs and Settlement Class Members shall look solely to the Cash Settlement Amount as satisfaction of all claims that are released hereunder. Under no circumstances shall Sylvania be required to pay more than the Cash Settlement Amount pursuant to this Agreement, including for Claims Administration Expenses, Class Notice, and/or any Fee Award or Incentive Award, or any other payment to any party or their attorneys, experts or consultants with respect to any aspect of this Action, each of which shall be paid exclusively from the Cash Settlement Amount.

25. Plaintiffs and Settlement Class Members acknowledge that, as of the Effective Date, the releases given herein shall become effective immediately by operation of the Order and Final Judgment and shall be permanent, absolute, and unconditional.

26. If Final Approval is not granted or is reversed or vacated by court order through appeal, review or other judicial proceeding, the total amount of the Gross Settlement Fund, less any Taxes already properly incurred or paid under the provisions of Paragraph 29 and any Claims Administration Expenses already properly paid pursuant to Paragraph 30 of this Agreement, will be paid to Sylvania.

Packaging Changes

27. In addition to contributing the Cash Settlement Amount, Sylvania will implement new packaging for the SilverStar® ULTRA, SilverStar®, and XtraVision® families of automotive lighting, substantially in the form of packaging attached hereto as Exhibit B. Plaintiffs, Class Counsel and Sylvania agree that, (a) while Sylvania has denied and continues to deny Plaintiffs' claims in this case, one of the reasons for Sylvania's decision to change the packaging was in response to and for the settlement of the claims made by Plaintiffs on behalf of the Class in this litigation, (b) in developing the new packaging, Sylvania has taken into consideration the comments of Plaintiffs and Class Counsel, (c) Sylvania's new packaging

addresses Plaintiffs' objections and has no materially misleading claims or representations, and (d) the terms of this agreement do not require Sylvania to keep packaging in the forms reflected in Exhibit B for any particular period of time, nor restrict Sylvania's right to make other packaging or marketing changes. Sylvania represents that it will no longer actively market or sell the Cool Blue® product line in the United States after June 30, 2014. Should Sylvania decide thereafter to manufacture and sell the Cool Blue® product line in the United States, Sylvania agrees to make packaging changes consistent with the alterations made to SilverStar® ULTRA, SilverStar®, and XtraVision® packages.

VIII. SETTLEMENT ADMINISTRATION

28. The Claims Administrator shall administer the Settlement subject to the jurisdiction of the Court. The Claims Administrator agrees to be subject to the jurisdiction of the Court with respect to the administration of the Settlement, the distribution of the Gross Settlement Fund pursuant to the terms of this Agreement, and any issues arising from such administration. Sylvania shall have no responsibility or liability for the administration of the Settlement and shall have no liability to the Settlement Class Members in connection with, as a result of, or arising out of such administration.

29. All taxes on the income or investment gains of the Gross Settlement Fund and expenses and costs incurred in connection with the taxation of the Gross Settlement Fund (including, without limitation, expenses of tax attorneys and accountant) (collectively, "Taxes") shall be paid out of the Gross Settlement Fund, shall be considered to be a cost of administration of the Settlement, and shall be timely paid by the Claims Administrator without prior order from the Court. Sylvania shall have no liability or responsibility for the payment of any Taxes.

30. After an order granting Preliminary Approval, without further approval from Sylvania or the Court, Class Counsel may direct and the Claims Administrator may be paid at the

In *Exxon*, former Judge Scott found, and Judge Gold ordered, that the *supersedeas* bond should be calculated as the amount of interest that would accrue on settlement funds whose distribution was delayed by the appeal, for the expected one year duration of the appeal. *Exxon R&R* at 21, n. 8; *Exxon*, 2006 WL 1132371 at 19. Judge Gold thus ordered that if the objecting class member chose to appeal he must post a bond of \$13,500,000. *Exxon*, 2006 WL 1132371 at 19. This rule makes eminent good sense, and should be applied here.⁵

Here, the appeals can be expected to last at least a year, and will delay distribution of the entire Net Settlement Fund of approximately \$280 million to the Settlement Class Members during that time. The Settlement does not permit distributions to Settlement Class Members until after resolution of any appeals. See **DE # 1471-1**, ¶ 83 (distributions to take place “[w]ithin 30 days of the Effective Date”), ¶ 22 (defining “Effective Date” as the fifth business day after all appeals have been concluded, including the time for filing a petition for certiorari). Applying former Judge Scott’s reasoning, the Objector-Appellants are clearly adverse to the 99.9% of the Settlement Class Members who have accepted the Settlement by not objecting to it. Accordingly, the Objector-Appellants should be required to post *supersedeas* bonds as a condition to pursuing their appeals of this Court’s Order and Final Judgment. The Objector-Appellants should be required to post *supersedeas* bonds equal to two years’ interest on \$280 million, or \$616,338.00, in addition to the \$5,000 cost bond under Rule 7.

IV. CONCLUSION

For the reasons set forth herein, requiring each of the Objector-Appellants to post significant appeal bonds is justified and appropriate. Plaintiffs respectfully request that the Court

⁵ In *Exxon*, Judge Gold and Judge Scott based the interest calculation on the T-bill rate, and this amount can be calculated precisely at the time of imposition of the bond.

enter an Order under FRAP 7 and 8 requiring each of the Objector-Appellants to post appeal bonds totaling \$621,338.00, and for such other relief as this Court deems appropriate.

Dated: December 27, 2011.

Respectfully submitted,

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Plaintiffs' Executive Committee

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE No. 09-MD-02036-JLK

**IN RE: CHECKING ACCOUNT
OVERDRAFT LITIGATION**

MDL No. 2036

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Robert C. Gilbert
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Florida Bar No. 561861
GROSSMAN ROTH, P.A.
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commencement of each month prior to Final Approval the reasonable costs and expenses expected to be incurred by the Claims Administrator in that month for Claims Administration Expenses (including, without limitation, the costs of Notice, the establishment and operation of the Settlement Website, and other reasonable expenses or fees charged by the Claims Administrator in connection with providing notice and processing submitted claims), up to a total of no more than the amount provided in Paragraph 22, subparagraph (a). Any such payment to the Claims Administrator shall not affect the amount of the Cash Settlement Amount, or the time by which Sylvania is required to deposit any portion of the Cash Settlement Amount pursuant to Paragraph 22.

IX. DISTRIBUTION TO AUTHORIZED CLAIMANTS

31. For each Claimant determined by the Claims Administrator to be eligible pursuant to the provisions of Paragraphs 10 through 14, the Claims Administrator shall make a pro-rata payment to that Claimant out of the Net Settlement Amount. Each Claimant determined to be eligible shall be entitled to payment from the Net Settlement Amount for one claimed purchase of the Covered Products, regardless of how many additional products the Claimant may claim to have purchased.

32. Payments to Claimants shall be made by check and mailed to the Claimants following, but no later than ninety (90) days after, the Effective Date. All checks will indicate on their face that they are void if not negotiated within one hundred twenty days (120) days of issuance. Funds from the checks returned as undeliverable or remaining uncashed for more than one hundred twenty days (120) days after issuance shall be redeposited into the Net Settlement Fund.

33. If all eligible Claims have been paid and funds remain in the Net Settlement Fund two-hundred and seventy (270) days after the Effective Date, subject to an application to be filed

by Class Counsel to the Court and the Court's approval thereof, distribution of any remaining funds will be made to eligible Claimants who cashed their initial checks on a pro-rata basis, provided, however that if the costs of administration for making such a distribution would constitute a material part of the remaining funds, then those remaining funds shall be distributed as directed by the Court. Subject to the terms of this Agreement, the Settling Parties intend to distribute all remaining money in the Net Settlement Fund to eligible Claimants.

X. FEE AND INCENTIVE AWARDS

34. Under no circumstances shall any Fee Award or Incentive Award described herein, or any other claim to compensation from any party or their attorneys, experts or consultants, constitute an obligation for Sylvania to contribute any more than the Cash Settlement Amount. None of the provisions of this Agreement is conditioned on the Court's approval of, or on the amount of, any Fee Award or Incentive Award or other compensation for any party or their attorneys, experts or consultants.

Fee Award

35. Class Counsel may apply on behalf of Class Counsel to the Court for a Fee Award from the Gross Settlement Fund of attorneys' fees and reimbursement of expenses as consideration for obtaining the Settlement as described herein.

36. Class Counsel has not sought Sylvania's consent to any Fee Award, and Sylvania takes no position with respect to any Fee Award that may be approved by the Court for payment from the Gross Settlement Fund after the Effective Date.

Application and Payment of Fee Award

37. Class Counsel's final application for any Fee Award, and any documents submitted in support thereof, shall be filed with the Motion for Final Approval. Any Fee Award

approved by the Court shall be paid from the Gross Settlement Fund not prior to, but within ten (10) business days following, the Effective Date.

38. Any Fee Award shall be wired by the Claims Administrator to an account established by Class Counsel for distribution to Class Counsel. Sylvania shall bear no responsibility or liability for the apportionment and distribution of fees to, between, or among Class Counsel or any other person.

39. Notwithstanding any other provision of this Agreement to the contrary, the procedure for the allowance (in whole or in part) by the Court of any application by Class Counsel for attorney's fees, costs, and expenses, to be paid as the Fee Award, are to be considered by the Court separately and apart from its consideration of the fairness, reasonableness, and adequacy of the Settlement, provided, however, that the provisions of this Agreement that provide that under no circumstances shall Sylvania be obligated to contribute any more than the \$30,000,000 Cash Settlement Amount, as set forth herein, are an integral and indispensable condition of Sylvania's agreement.

Incentive Award to Class Representatives

40. Subject to approval by the Court and in recognition of Class Representatives' time and effort expended on behalf of the Settlement Class Members, Class Representatives may seek incentive awards in the aggregate amount of up to twenty-five thousand dollars (\$25,000.00), to be paid from the Gross Settlement Fund not prior to, but within ten (10) business days following, the Effective Date.

41. Each of the Settling Parties and their counsel represent and warrant that they have made no agreement with or promise for Plaintiffs, any Class Representative, or any other Settlement Class Member to receive any payments or value in respect of this case or this Settlement, other than to participate as a Settlement Class Member in the claims and distribution

provisions of this Agreement and to receive, subject to the approval of the Court, an Incentive Award as described in Paragraph 40.

XI. FINAL APPROVAL

Motion for Final Approval

42. No later than twenty-one (21) days after receiving the Claims Administrator's report pursuant to Paragraph 12, Class Counsel shall petition the Court for a final order that: (1) confirms the certification of the class of Settlement Class Members, as defined above; (2) dismisses the Action, with prejudice, upon the Effective Date; (3) decrees that neither the Final Approval nor this Agreement constitutes an admission of liability, fault, or wrongdoing; (4) enjoins all Releasing Parties and Related Actions from asserting and Released Claims against Sylvania; (5) releases Sylvania from the Released Claims of all Releasing Parties; (6) finds that this Agreement is entered into in good faith, is reasonable, fair, and adequate, and is in the best interest of the Settlement Class Members; (7) preserves the Court's continuing and exclusive jurisdiction over the Settling Parties, including Sylvania and all Settlement Class Members, to administer, supervise, construe, and enforce this Agreement in accordance with its terms and conditions, but without affecting the finality of the Final Approval; and (8) making such orders necessary and appropriate to effectuate the terms and conditions of this Agreement.

Fairness Hearing

43. Subject to the Court's schedule, the parties agree that within seventy-five (75) days after the Motions for Final Approval and Attorneys' Fees, Costs and Incentive Awards are filed, the Court should conduct a Fairness Hearing so that the Court may review any objections to this Agreement, consider the fairness, reasonableness, and adequacy of this agreement, consider Class Counsel's petition for a Fee Award, and consider Class Counsel's petition for Final Approval. The date of the Fairness Hearing shall be posted on the Settlement Website in

advance of the hearing. If the date of the Fairness Hearing is subsequently modified by the Court, no further notice is required to be published to Settlement Class Members, except that the Parties will notify any Objector in writing of any modifications to the date of the Fairness Hearing.

Dismissal of this Action

44. The Final Approval shall provide that this Action shall be dismissed, with prejudice, upon the Effective Date.

Dismissal of Related Actions

45. Following Final Approval, Class Counsel shall cooperate with and assist Sylvania in seeking the dismissal, with prejudice, of any Related Actions.

Cooperation

46. The Settling Parties shall cooperate in good faith and undertake all reasonable actions and steps to accomplish the events described in this Agreement, including in obtaining Preliminary Approval and Final Approval, to respond to any collateral attack on the Settlement, this Agreement, and/or its preclusive effect, and to take any appeal from an order denying Final Approval. Notwithstanding the foregoing, however, Sylvania shall have no obligation to take any position regarding amounts awarded or not awarded to Class Counsel as part of any Fee Award, or to amounts awarded or not awarded to Plaintiffs as part of any Incentive Award.

XII. TERMINATION

Right to Terminate

47. This Agreement is contingent upon the final certification of the Settlement Class, Final Approval, and the Agreement becoming Final. Sylvania may terminate this Agreement in its entirety at any time and without further obligation if: (1) any court rejects or denies approval or any term or condition of this Agreement; (2) any court makes any order purporting to alter,

amend, or modify any term or condition of this Agreement; (3) any court fails to certify the Settlement Class; (4) any court makes any order purporting to preclude Plaintiffs and/or Sylvania from proceeding in whole or in part with any of the terms and conditions of this Agreement; or (5) more than an agreed upon number of Class Members timely and validly opt out of the Settlement, in accordance with the terms and conditions set forth in Paragraphs 19 through 21 of this Agreement.

Notice of Termination

48. If Sylvania exercises its right to terminate this Agreement, Sylvania shall promptly notify the Court and Class Counsel in writing and direct the Claims Administrator to notify the Settlement Class Members by: (i) posting information on the Settlement Website; and (ii) emailing information to those Claimants who provided an email address to the Claims Administrator.

Effect of Termination

49. If Sylvania exercises its right to terminate this Agreement, this Agreement shall be considered null and void, with no further force or effect, no Person shall be bound by any of its terms or conditions (except with regard to return of any remaining portions of the Cash Settlement Amount with any interest or investment returns thereon), and the rights of any Person with respect to the claims and defenses asserted in this Action shall be restored to the positions existing immediately prior to the execution of this Agreement.

50. Except as otherwise expressly provided herein, if the Agreement is terminated in accordance with its terms and conditions, vacated, or otherwise fails to become effective for any reason, the Settling Parties shall be deemed to have reverted to their respective statuses in the Action as of the date of this Agreement. In that event, except as otherwise expressly provided, the Settling Parties shall proceed in all respects as if this Agreement and any related orders had

not been entered, and any portion of the Cash Settlement Amount previously paid by or on behalf of Sylvania, together with any interest or investment returns earned thereon, less any Taxes due with respect to such income or returns and any costs from the Claims Administrator for administration and notice actually incurred and paid or payable from the Cash Settlement Amount, shall be returned to Sylvania.

XIII. RELEASE

Release

51. Upon Final Approval, and notwithstanding the provisions of Section 1542 of the Civil Code of the State of California and any similar, comparable, or equivalent provision of any other state law, each Settlement Class Member who has not validly and timely opted out of the Settlement shall be deemed to irrevocably and unconditionally release and discharge Sylvania of and from liability for any and all Released Claims, and shall be permanently barred and enjoined from initiating, asserting, and/or prosecuting any Released Claims against Sylvania in any court or forum. This Agreement shall be the sole and exclusive remedy for any and all Released Claims against Sylvania. Sylvania shall not be subject to liability or expense of any kind to any Releasing Party with respect to any Released Claim.

Binding Effect

52. The Settling Parties agree that they may hereafter discover facts in addition to or different from those they believe to be true regarding the subject matter of this Agreement. The Settling Parties agree that, notwithstanding the discovery of any such additional or different facts that, if known, could materially affect their decisions to enter into this Agreement, the provisions of this Agreement, including releases given herein, shall be and remain in effect as a full, final, and complete general release of the Released Claims, and the Settling Parties shall not be entitled to modify or set aside this Agreement, in whole or in part, by reason thereof. With respect to any

and all Released Claims, upon the Effective Date, the Settling Parties hereby expressly waive and relinquish any and all rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which might otherwise render unenforceable a release contained in this Agreement, including but not limited to Section 1542 of the Civil Code of the State of California (or any law or principle of common law which is similar, comparable, or equivalent to Section 1542 of the Civil Code of the State of California), which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

XIV. SETTLEMENT PURPOSES ONLY

No Admission

53. This Agreement, whether or not consummated, and any communications exchanged or actions taken pursuant to or during the negotiation of this Agreement are for settlement purposes only. Neither the fact of nor the contents of this Agreement or its exhibits, nor any communications exchanged nor actions taken pursuant to or during the negotiation of this Agreement, shall constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim asserted or fact alleged in this Action or any Related Action, or of any wrongdoing, fault, violation of law, or liability of any kind by Sylvania.

Inadmissibility

54. This Agreement and all negotiations, correspondence, and communications leading up to its execution shall be deemed to be protected by Federal Rule of Evidence 408 and any analogous state or federal rules or principles. Neither this Agreement nor any terms, conditions, contents, provisions, or exhibits hereof, nor any negotiations, correspondence, or communications leading up to the execution of this Agreement, shall constitute a precedent or be

discoverable or admissible for any purpose in any proceedings; provided, however, that this Agreement shall be admissible in any proceeding related to the approval of this Agreement, to enforce any of its terms and conditions, to support or defend this Agreement in an appeal from an order granting or denying Final Approval, or to enforce or assert a claim or defense of res judicata, collateral estoppel, claim preclusion, issue preclusion, settlement, release, merger and bar, or any similar claim or defense against Plaintiffs, any Settlement Class Member, or any third party.

Reservation of Rights

55. This Agreement is made without prejudice to Sylvania's rights to: (1) oppose class certification in this Action, or any Related Action, if this Agreement is terminated or if Final Approval is not granted or is reversed or vacated after appeal or other judicial proceeding; or (2) oppose class certification in any Related Action or other putative or certified class action, should those actions not be dismissed.

XV. ADDITIONAL REPRESENTATIONS AND WARRANTIES

Authority to Execute

56. The signatories to this Agreement represent and warrant that they are fully empowered and authorized by the Settling Parties who they respectively represent to enter into this Agreement and bind the Settling Parties to the terms and conditions hereof.

57. The Settling Parties represent and warrant that the signatories to this Agreement are fully empowered and authorized by the Settling Parties to enter into this Agreement and bind the Settling Parties to the terms and conditions hereof.

Assignment of Claims

58. The Settling Parties represent and warrant that no claim and no portion of any claim referenced or released in this Agreement has been sold, assigned, conveyed, or otherwise transferred to any other Person.

Reading and Understanding, Receipt of Advice of Counsel

59. The Settling Parties acknowledge, agree, and specifically represent and warrant that they have carefully and fully read and understand this Agreement, including all terms and conditions and all exhibits attached hereto; that they have received independent legal advice regarding the advisability of entering into this Agreement and the legal effects of this Agreement, including the Release provisions in Paragraphs 51 through 52.

Reliance on Own Judgment

60. The Settling Parties acknowledge, agree, and specifically represent and warrant that they have relied upon their own judgment and that of their legal counsel regarding the sufficient and agreed-upon consideration for this Agreement, and that no statement outside of this Agreement by any of the other Settling Parties or their agents, employees, directors, or legal representatives influenced or induced them to execute this Agreement.

XVI. INTERPRETATION AND ENFORCEMENT

Governing Law

61. This Agreement shall be construed under and governed by the laws of the State of New Jersey, applied without regard to laws applicable to choice of law.

Entire Agreement

62. This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Settling Parties with regard to the subject of this Agreement and shall

supersede any previous agreements, representations, communications, and understandings among the Settling Parties with regard to the subject matter of this Agreement.

Joint Preparation

63. This Agreement shall be construed as if the Settling Parties jointly prepared it in all respects, and any uncertainty or ambiguity shall not be interpreted against the interests of any of the Settling Parties based on that party's involvement in preparing any language herein.

Captions

64. The captions and section headings used in this Agreement are for convenience and identification purposes only and are not part of this Agreement.

Modification

65. This Agreement may not be changed, modified, or amended, except in writing signed by all Settling Parties and approved by the Court. Notwithstanding the foregoing, however, the Settling Parties may, without Court approval, mutually agree to reasonable extensions of time in which to accomplish the tasks required by the terms and conditions of this Agreement or waive immaterial non-compliance with the claims and distribution process described herein.

Waiver

66. The waiver on any one occasion of any term, condition, or breach of this Agreement shall not be deemed to be a waiver of any other term, condition, or breach of this Agreement, and shall not be deemed to be a continuing waiver or evidence of waiver on any other occasion.

Binding Effect

67. This Agreement shall be binding upon and inure to the benefit of the Settling Parties and each of their respective heirs, successors, assigns, executors, and legal representatives.

Continuing Jurisdiction

68. The Settling Parties agree that the Court shall retain exclusive and continuing jurisdiction of the Action, Settling Parties, Settlement Class Members, and the Claims Administrator to interpret and enforce the terms, conditions, and obligations of this Agreement.

XVII. MISCELLANEOUS TERMS AND CONDITIONS

Litigation Brought in Good Faith

69. The Settling Parties to this Agreement intend the Settlement to be a final and complete resolution of all disputes that have been or could be asserted by the Settlement Class Members against Sylvania with respect to the Settled Claims. Accordingly, the Settling Parties and Class Counsel agree not to assert in any forum that the litigation was brought by Plaintiffs or defended by Sylvania in bad faith or without a reasonable basis, or to assert any violation of Rule 11 of the Federal Rules of Civil Procedure or of 28 U.S.C. § 1927 relating to the prosecution, defense, or settlement of this Action.

70. The Settling Parties agree that the amount paid and the other terms of this Agreement were negotiated in good faith at arm's-length by the Settling Parties, with the assistance of mediators, and reflect a Settlement that was reached voluntarily after consultation with experienced legal counsel.

Time Calculation

71. Except as otherwise provided in this Agreement, all time periods set forth herein shall be computed pursuant to the rules and procedures set forth in Rule 6(a) of the Federal Rules of Civil Procedure.

No Conflict Intended

72. Any inconsistency between this Agreement and any exhibits hereto shall be resolved in favor of this Agreement. Any inconsistency between the headings used in this Agreement and the text in the paragraphs of this Agreement shall be resolved in favor of the text in the paragraphs.

Notices

73. Any notice, instruction, application for Court approval, or application for Court orders sought in connection with this Agreement, or any document to be given by any Settling Party to any other Settling Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, to Class Counsel at the following addresses:

John E. Keefe, Jr., Esq.
KEEFE BARTELS
170 Monmouth Street
Red Bank, NJ 07701

Barry R. Eichen, Esq.
EICHEN CRUTCHLOW ZASLOW & McELROY, LLP
40 Ethel Road
Edison, NJ 08817

and to Sylvania's counsel at the following addresses:

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Washington, D.C. 20005

Stephen M. Orlofsky
David C. Kistler
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Princeton, NJ 08540

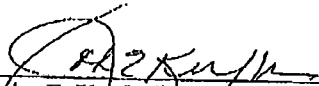
Execution

74. This Agreement may be executed by facsimile or email signatures in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same valid and binding agreement.

Publicity

75. Prior to the date that this Agreement is filed with the Court, neither the Settling Parties nor any of their respective counsel shall initiate any communication regarding the Settlement or this Agreement with the media or other third-parties not presently involved in this Action. In the event that any representative of the media initiates an inquiry regarding the Settlement or this Agreement prior to the date that the Agreement is filed with the Court, the Settling Parties and their respective counsel agree to respond, if at all, by referring the media to publicly-filed documents in this Action.

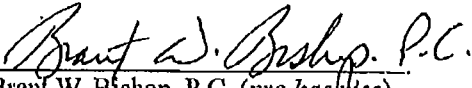
IN WITNESS WHEREOF, each of the Settling Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.


John B. Keefe, Jr., Esq.
KEEFE BARTELS
170 Monmouth Street
Red Bank, NJ 07701
Telephone: (732) 224-9400

Barry R. Eichen, Esq.
EICHEN CRUTCHLOW ZASLOW &
McElroy, LLP
40 Ethel Road
Edison, NJ 08817
Telephone: (732) 777-0100

*Co-Lead Counsel on behalf of all Plaintiffs and
Class Representatives:*

*Imran Chaudhri
Lee Kelly
Derek Hahn
David Christopher
Larry Byrd
Richard Smith
Deidra Ross*

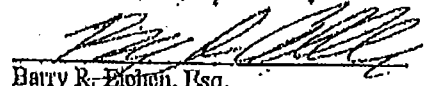

Brant W. Bishop, P.C. (pro hac vice)
Eunice H. Eun (pro hac vice)
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Phone: (202) 879-5000

Stephen M. Orlofsky
David C. Kristler
New Jersey Resident Partners
BLANK ROME LLP
301 Carnegie Center, 3rd Floor
Princeton, NJ 08540
Telephone: (609) 750-7700

*Counsel on behalf of Defendants
OSRAM SYLVANIA, Inc. and
OSRAM SYLVANIA PRODUCTS, Inc.*

IN WITNESS WHEREOF, each of the Settling Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

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KEEFE BARTELS
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BICHEN CRUTCHLOW ZASLOW &
McElroy, LLP
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*Co-Lead Counsel on behalf of all Plaintiffs and
Class Representatives:*
Imran Chaudhri
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Princeton, NJ 08540
Telephone: (609) 750-7700

Counsel on behalf of Defendants
OSRAM SYLVANIA, Inc. and
OSRAM SYLVANIA PRODUCTS, Inc.

Exhibit “C”

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IMRAN CHAUDHRI, individually,
And on behalf of all others similarly situated,

Plaintiff,

- against-

OSRAM SYLVANIA, INC., and OSRAM
SYLVANIA PRODUCTS, INC.,

Defendants.

Civil Action No.
2:11-CV-05504-SDW-MCA

CERTIFICATION OF NORMAN SWETT

I, Norman Swett, of full age, certify:

1. I am a Senior Project Manager for Rust Consulting, Inc. ("Rust Consulting"), the Settlement Administrator in this case. I am over twenty-one years of age and am authorized to make this certification on behalf of Rust Consulting and myself.

2. Rust Consulting has extensive experience in class action matters, having provided services in class action lawsuits affecting millions of class members in cases involving employment, consumers, property, insurance, securities and product liability, among its more than 3,500 projects.

3. The Court appointed Rust Consulting as the settlement administrator for this Settlement.

4. Except as otherwise stated, I am fully familiar with and have personal knowledge of the matters in this Certification and am competent to testify about them if called upon to do so.

5. A twelve-month delay in distribution of the Settlement Fund will result in additional expenses to administering the Settlement. The estimated cost for one year is \$75,882.

1 The added expenses include (1) costs related to claimants' or class members' communications;
2 and (2) costs of technical and project support, including maintaining the settlement website, toll-
3 free telephone number and data storage. Exhibit "A" lists the estimated additional expenses.

4
5 I certify that the statements made by me are true and accurate to the best of my knowledge
6 and belief. I understand that, if any of these statements are willfully false, I am subject to
7 punishment.

8 Dated: 4/24/2015

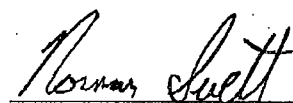

NORMAN SWETT

EXHIBIT “A”

Chaudhri v Osram Sylvania Projected Expenses During Appeal
April 24, 2015

Description	Volume		Rate(\$)	Total (\$)	Frequency
Legal Notification					
<i>Follow-Up to Initial Notice</i>					
Receive Undeliverable Mail and Update Database	100	Notices	\$ 0.35	\$ 35	Monthly
Website (English and Spanish)					
Draft and post website content	4	Hours	\$ 155.00	\$ 620	One-Time Fee
Spanish Translation	2	One-Time Fee	\$ 500.00	\$ 1,000	One-Time Fee
Monthly Maintenance/Hosting	1	Month	\$ 300.00	\$ 300	Monthly
Claims Processing					
Correspondence					
Receipt (email and white mail)	5	Pieces	\$ 0.75	\$ 4	Monthly
Process	0.75	Hours	\$ 100.00	\$ 75	Monthly
Hard Copy Claim Forms					
Receipt	2	Claims	\$ 0.75	\$ 2	Monthly
Data Capture	2	Claims	\$ 1.00	\$ 2	Monthly
imaging (2 Pages per Form)	4	Pages	\$ 0.12	\$ 0	Monthly
Full Automated Call Center (minimum \$500/month)					
Spanish Translation and Recording	2	One-Time Fee	\$ 500.00	\$ 1,000	One-Time Fee
Draft Scripting, Coordination, Recording and Reports	4	Hours	\$ 155.00	\$ 620	One-Time Fee
Interactive Voice Response (Automated Q&A)	523	Minutes	\$ 0.49	\$ 256	Monthly
800# Charges	504	Minutes	\$ 0.12	\$ 60	Monthly
Distribution and Tax Reporting					
Fund Distribution					
Address Trace	25	Pieces	\$ 0.20	\$ 5	Monthly
Fees					
Project Management	10	Hours	\$ 155.00	\$ 1,550	Monthly
Technical Consulting	4	Hours	\$ 170.00	\$ 680	Monthly
Expenses					
Storage	100	Boxes	\$ 2.50	\$ 250	Monthly
Data Storage	1	Monthly	\$ 3,200.00	\$ 1,850	Monthly
P.O Box Renewal	2	Yearly	\$ 1,218.00	\$ 2,436	Annual
Tax Reporting	1	Yearly	\$ 1,750.00	\$ 1,750	Annual
Taxes	1	Yearly	\$ 500.00	\$ 500	Annual
Printing/Photocopies	100	print outs	\$ 0.14	\$ 14	Monthly
IVR System Charge	1		\$ 280.00	\$ 280	Monthly
Miscellaneous	1		\$ 300.00	\$ 300	Monthly

Projected Expenses	
Total One-Time Expenses	\$ 3,240
Total Annual Expenses	\$ 4,686
Total Monthly Expenses	\$ 5,663

One Year Projected Expenses	
1 x Total One-Time Expenses	\$ 3,240
1 x Total Annual Expenses	\$ 4,686
12 Months x Monthly Expenses	\$ 67,956
Total Projected One-Year Expenses	\$ 75,882

Exhibit “D”

John E. Keefe, Jr.
Keefe Bartels, LLC
170 Monmouth Street
Red Bank, New Jersey 07701
(732) 224-9400

Barry R. Eichen, Esq.
EICHEN CRUTCHLOW ZASLOW &
McELROY, LLP
40 Ethel Road
Edison, New Jersey 08817
(732) 777-0100

Class Counsel for the Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IMRAN CHAUDHRI, DEIDRA ROSS,
RICHARD SMITH, LARRY BYRD, DAVID
CHRISTOPHER, DEREK HAHN and LEE S.
KELLY, individually, and on behalf of
themselves and all others
similarly situated,

Plaintiffs,

v.

OSRAM SYLVANIA, INC., and OSRAM
SYLVANIA PRODUCTS, INC.,

Defendants.

Case No. 2:11-CV-05504 (SDW)(MCA)

**CERTIFICATION OF
CHRISTOPHER G. LINSOTT**

I, CHRISTOPHER G. LINSOTT, of full age, hereby certify as follows:

1. I am a Director of Keegan, Linscott & Kenon, P.C. and Director of the firm's Litigation Support, Bankruptcy and Forensic Accounting Practice, and have been qualified as an economic expert and prepared written and oral testimony before various courts. Attached as Exhibit "A" is my *curriculum vitae*.

2. The statements made by me in this Certification are based upon my experience, personal knowledge and applicable financial rates.

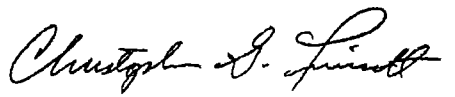
3. Attached as Exhibit "B" is an analysis of the lost interest for the Settlement Fund's Principal of \$27,350,000 for one year.

4. The interest rate is based upon the 20-year treasury rate released on April 21, 2015. The treasury rate represents a conservative rate of return on the Principal.

5. As shown in Exhibit "A," the Potential Lost Interest after year one is \$636,871.

I certify that the statements made by me are true and accurate to the best of my knowledge and belief. I understand that, if any of these statements are willfully false, I am subject to punishment.

Dated: April 25, 2015



CHRISTOPHER G. LINSOTT

Exhibit “A”

CHRISTOPHER G. LINSKOTT
33 N. STONE AVENUE, SUITE 1100
TUCSON, ARIZONA 85701
(520) 884-0176

EDUCATION: B.A. Psychology, Amherst College, 1980
M.S. Accounting, New York University GBA, 1982
Certified Public Accountant (CPA) 1984
Certified Fraud Examiner (CFE) 1992
Certified Insolvency and Restructuring Advisor (CIRA) 1997

BACKGROUND: 1994 - Present
DIRECTOR
Keegan, Linscott & Kenon, P.C.
DIRECTOR
The KLK Consulting Group, Inc.
Owner of CPA firm. Head of litigation support, bankruptcy and forensic accounting practice for the firm. Other duties include managing corporate financial audits and tax clients.

1990-1993
DIRECTOR, LITIGATION SUPPORT SERVICES
Coopers & Lybrand – Tucson, AZ

Responsible for work associated with accounting support for attorneys involved in litigation, fraud, receivership cases and bankruptcy work in Southern Arizona. Primary litigation duties included damage calculation review and preparation, forensic accounting and financial analysis. Other duties included manager responsibilities for financial audits.

1989-1990
CHIEF FINANCIAL OFFICER
Tombstone & Southern Railroad, Inc.

Served for two years as CFO of start-up entertainment projects in Cochise County. As one of three principals in this project, duties encompassed finance; budgeting, taxes, financial reporting, prospective reporting, capital solicitation, cash management and development of a business plan. Non-financial responsibilities included marketing, public speaking and recruitment of personnel.

1981-1989
SENIOR AUDIT MANAGER
Peat Marwick Main & Co. – New York, NY
Peat Marwick Main & Co. – Boston, MA

Responsibilities included the supervision of fifty staff people on sixty audits for twelve clients. Duties included public and private reporting to the SEC and other third parties, day-to-day management of field work, oral and written presentations to top client management and Board of Directors, technical problem-solving and profit maximization. Areas of industry expertise include higher education, manufacturing, real estate and financial institutions.

**RANGE OF
EXPERIENCE:**

Reviewed bankruptcy documents of various commercial entities to determine asset liquidation preference and financial viability of ongoing entity.

Served as accountant for various Chapter 11 entities, assisting with various aspects of corporate reorganization.

Served as accountant for various creditor committees in Chapter 11 proceedings to analyze fraudulent conveyance and preference issues and financial viability of ongoing entities.

Served as "Responsible Party" (Trustee) for Chapter 11 debtor in successful corporate reorganization.

Served as Receiver for corporate commercial entity and financial institutions in Arizona and California.

Served as Trustee for Chapter 11 and Chapter 7 entities.

Served as Examiner in Chapter 11 proceeding.

Prepared operating cash forecasts for commercial, municipal and non-profit businesses.

Developed financial packages used to obtain project financing.

Provided expert witness testimony, including damage analysis and accounting-related issues in commercial litigation cases dealing with lost profits, owner disputes, securities fraud, employee/employer disputes, personal injury, business interruption claims and various other matters.

Performed various fraud analyses and forensic procedures related to litigation in Ponzi schemes and employee embezzlement schemes.

Constructed damage theories including computer-generated models for commercial businesses involved in litigation.

Assisted in due diligence reviews of corporate commercial acquisitions and joint ventures.

Assisted in the preparation of SEC filings for bankrupt real estate entities.

Analysis of sole and separate property issues, hidden assets and closely held corporations in divorce settlement litigation.

**PROFESSIONAL
ORGANIZATIONS:**

Member of the Arizona Society of CPA's, American Institute of Certified Public Accountants, National Association of Certified Fraud Examiners, Association of Insolvency and Restructuring Advisors. Board of Directors of Bashas, Inc.

Exhibit “B”

**Sylvania Litigation
Lost Interest Analysis**

Principal

Interest Rate: 2.31% 0.00602%

Period	20 Year T-Bill ⁽¹⁾	Escrow Account Actual	Potential Lost Interest
Month 1	\$ 52,648.75	\$ 137.21	\$ 52,511.54
Month 2	52,750.10	137.21	52,612.89
Month 3	52,851.64	137.21	52,714.43
Month 4	52,953.38	137.21	52,816.17
Month 5	53,055.32	137.21	52,918.11
Month 6	53,157.45	137.21	53,020.24
Month 7	53,259.78	137.21	53,122.57
Month 8	53,362.30	137.21	53,225.09
Month 9	53,465.02	137.21	53,327.81
Month 10	53,567.94	137.21	53,430.73
Month 11	53,671.06	137.21	53,533.85
Month 12	53,774.38	137.21	53,637.17
Total Year 1	\$ 638,517	\$ 1,647	\$ 636,871
Month 1	53,877.90	137.21	\$ 53,740.69
Month 2	53,981.61	137.21	53,844.40
Month 3	54,085.53	137.22	53,948.31
Month 4	54,189.64	137.22	54,052.42
Month 5	54,293.95	137.22	54,156.73
Month 6	54,398.47	137.22	54,261.25
Month 7	54,503.19	137.22	54,365.97
Month 8	54,608.11	137.22	54,470.89
Month 9	54,713.23	137.22	54,576.01
Month 10	54,818.55	137.22	54,681.33
Month 11	54,924.08	137.22	54,786.86
Month 12	55,029.80	137.22	54,892.58
Total Year 2	\$ 653,424	\$ 1,647	\$ 651,777
Total Years 1 & 2	\$ 1,291,941	\$ 3,293	\$ 1,288,648

Footnotes:

(1) 20-year treasury rate released April 21, 2015 by the Federal Reserve (<http://www.federalreserve.gov/releases/h15/update>)